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Financial Management, Discipline,  
and  
Withdrawal of Funds Under RERA  
(volume 06 of RERA series)

CA. Vinay Thyagaraj  
Senior Partner, Venu & Vinay,  
Chartered Accountants

vinay@vnuv.ca www.vnuvca.com  
+91-80-26606498, 26671433, 26676751



CA. Vinay Thyagaraj

# FINANCIAL MANAGEMENT, DISCIPLINE, AND WITHDRAWAL OF FUNDS UNDER RERA

(PART - VI OF RERA SERIES)

RERA

Any business or venture shall forecast, plan the financial aspects while conceptualisation and shall consider the various associated risks and costs thereon. The Real Estate Industry is not an exception to this. Since the project development takes place over a number of years various risks of availability of timely finance, political unrest, government policies, government regulations, availability of materials, men, market, etc., impact the feasibility, the profitability of the project.

Hitherto (prior to RERA) most of the promoters were used to starting a project without comprehending various costs associated with the development of the project. They used to realise during development that the project may not be financially viable and result in loss or distress. e.g., Borrowing costs in case of low sales, compensation to the Allottees in case of delay in delivery of the project, changes in government levies apart from the escalation in material, labour costs, etc.,

The mandatory information to be filed at the time of application for grant of registration is the Estimated Cost of the Real Estate Project and the End Date of the Project. Now Promoters shall arrive at the Estimated cost of the Real Estate Project after considering all possible risks and costs associated with the development of the Project.

One of the concerns of the Real Estate Industry is the collection of money from allottees, utilisation of such collected money for the purpose for which it was collected, and enabling the promoters to complete the development of the project and deliver the units to the buyers. This discipline is in-built in *The Real Estate (Regulation and Development) Act 2016* which provides for :



1. When to Collect money - Only After Registration of Project - Section 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 designated bank account - Section 4(2)(I)(D)
4. **How much** money to be deposited into the project designated bank account - Section 4(2)(I)(D) - 70 % of realisation
5. **When to** withdraw money from the project designated bank account - Section 4(2)(I)(D) - after having completed the development work
6. **How to** withdraw money - Section 4(2)(I)(D) - based on the 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 the percentage of completion of development works in the project
8. Utilization of withdrawn money for the specific project - Section 4(2)(I)(D)

The financial discipline under RERA helps all the stakeholders in the projects viz., Landowners, vendors, suppliers, allottees, government agencies, lenders, investors, etc., in many ways -

1. Promoters plan their project cost and cash flows in accordance with the development of the project.
2. The Allottees' money shall be utilised for the specific project development. Unspent money if any, is available in the designated project bank account.
3. With the restriction on the usage of allottees' money, Promoters also prepare themselves and restrict to utilise the allottees' money for the same project,

enabling promoters to have sufficient money available to complete the development works in the project.

4. The Investors/ lenders/ financial institutions interest is protected and will have reliable information on the sale/realisation of the project/expenses incurred etc.,
5. RERA Authorities have the right to freeze the designated project bank account and funds available in the bank account can be used for remaining development works in the project in case of revocation/lapse of registration.
6. Revenue / Government Agencies viz., Income Tax, GST departments will have access to reliable information.

*Section 4(2)(l)(D) of the Real Estate (Regulation and Development) Act 2016 mandates that Seventy percent of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose.*

*1st proviso to Section 4(2)(l)(D) of the Act provides that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project.*

*2nd proviso to Section 4(2)(l)(D) of the Act provides that the amounts from the separate account shall be 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.*

#### **Analysis and practical approach -**

1. The Act mandates the promoter to open the Designated bank account for the specific project in a scheduled bank. Promoter shall provide such designated bank details at the time of project registration. Further, each State has a regulation or direction from the authority in relation to mode of the opening of designated bank account, maintenance of Project bank account and procedure for change of such bank account, etc.
2. The Act mandates 70% of amount so realised from the allottees to be deposited into the designated Project bank account.
3. 30% can be deposited into the project designated bank account or to any other bank account of the promoter.
4. The Act has made it mandatory to open the project designated bank account in Scheduled Bank only. This requirement is made in order to protect the stakeholders and interest of allottees. (Scheduled banks are banks that are listed in the 2nd schedule of the Reserve Bank of India Act, 1934) as scheduled banks norms are directly monitored by RBI.
5. The 70% of the money so deposited in designated Project bank accounts shall be withdrawn based on the percentage of completion of development works in the project to cover the cost of land and construction cost –
  - a. Rajasthan RERA has issued an order dated 29<sup>th</sup> Sep 2021 stating that the 70% of the amount realised from the allottees shall be utilised for the development of real estate project.
  - b. 70% amount realised from the allottees shall not be used for the purpose of repayment of a loan of a financial institution or bank until the project is completed.
  - c. Rajasthan RERA in its order mentions that the usage of this 70% amount other than for project development would be considered as misappropriation of the home buyers' money which was kept in reserve for completion of the project.
  - d. Further Rajasthan RERA may debar such bank if 70% amount is not transferred to a designated bank account in a reasonable time.
6. 30% can be utilised for any other purpose including repayment of loans etc.
7. The project designated bank account shall be free from lien or encumbrances. Lenders including financial institutions shall not have any hold on the project designated bank account.
8. Money brought in by the promoters (capital or loan) or borrowings need not be deposited into a project designated bank account.
9. The Act allows the promoter to withdraw the money based on the percentage completion of the project. Such percentage of completion shall be duly certified by the professionals like Architect, an Engineer, and Chartered Accountant in practice.
10. Once the amount is withdrawn from the project designated bank account, the same shall be utilised only for the same purpose (same project). The promoter shall settle the vendors / taxes etc., without keeping the liability on the project. Effectively, the money shall be utilised for the development of the project.
11. State Authorities have notified the professional certificate formats. Accordingly Chartered Accountant



Certificate formats are notified. With these certificates, the amount eligible to be withdrawn can be calculated.

12. As a Chartered Accountant, while issuing the Certificate under RERA, it should be verified, whether money realised from the allottees is deposited, the amount incurred/spent for the project based on the books of accounts maintained by the promoter.
13. The act mandates that the Certificate shall be issued by a Chartered Accountant holding Certificate of Practice (employees of the promoter are not eligible to issue these certificates).
14. Any money left in the project bank account can be withdrawn by the promoter at the end of the project / on completion of all development works in the project.
15. The project designated bank account is “self-regulated” and “self- maintained” and it is “not an escrow account” requiring approval of the banker / Authority etc., for withdrawal of money. However, these certificates shall be submitted to the authorities during the quarterly updates. These certificates shall be retained by the promoter for annual audit purposes.
16. Refer RERA Bank Account Directions, 2020 issued by Karnataka RERA.
17. 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.
18. Such designated project bank accounts shall contain the name of the promoter and project name. eg., If ABC Private Limited is the promoter and Lake View is the Project name then the bank account shall be as **ABC Private Limited (Lake View) RERA Account**.
19. Post RERA various banks have come out with banking products for RERA. This will have 3 different Accounts.
  - a. Master Collection Account - to deposit the 100% Collections
  - b. RERA 70% Account - banker transfers 70% of the money deposited automatically from 100% Account
  - c. 30% Account - banker transfers 30% of the money deposited automatically from 100 % Account
    - i. End of the day there will be NIL balance in the 100% collection account
    - ii. The 30% Account may be used as an operating
20. It is important to note that each Project shall have only one project designated bank account. Section 4(2)(l)(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 landowner or the 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.
21. 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.
  - a. Under the Revenue sharing scheme in the case of joint development, there may not be any challenges/difficulties between the landowner and the developer as they would have agreed upon the method of sharing the revenue from time to time.
  - b. In the case of the Area Sharing scheme of joint development, both landowners and the developer agree to comply with section 4(2)(l)(D) of the Act and also protect their interests while depositing the money into the designated bank account.
22. Few states provide for a designated project bank account for landowner and developer separately to deposit their share of the money. However, compliance and reporting under Section 4(2)(l)(D) including both the account details is mandatory.
23. A Chartered Accountant holding certificate of practice account by the promoter to make any payments to vendors etc.,
- iii. RERA 70% account will not have a Cheque facility. Based on % of completion the eligible amount will be transferred to either 30% Account or any other operative account of the promoter.
- iv. In case the promoter borrows money from the Banks / Financial Institutions, then the repayment of such borrowing happens out of 30% account/amount.

shall issue the certificate for withdrawal of funds in accordance with Section 4(2)(l)(D). Such certificates shall be issued only after obtaining the certificates of Engineer and Architect and assessing the content of those certificates and considering the information, correlating the same while issuing the certificate. Tamilnadu Real Estate (Regulation and Development) Rules 2017 mentions that-

- the Engineer shall certify that the items shown in the cost of construction are matching to the physical condition at the site of the real estate project;
- the Architect shall certify that the physical condition at the site is built as per the sanctioned plan, and the chartered accountant shall certify the cost incurred on construction cost and land cost;
- the Chartered Accountant shall also certify the proportion of the cost incurred on construction and

land cost to the total estimated cost of the project

#### Conclusion –

- The promoter of the real estate project shall take advice from the professionals while arriving at the estimated cost of the construction and development of the project.
- The estimated cost of the real estate project shall be the guide to the promoter to take decisions from time to time. The withdrawal ability of the promoter is based on the estimated cost so mentioned in the application for grant of RERA registration.

*Author can be reached at :  
vinay@vnnv.ca*



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