

September 2022

RERA Audit 2022
(Part - 16 of RERA Series)

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RERA AUDIT 2022

(PART - XVI OF RERA SERIES)



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Real Estate (Regulation and Development) Act 2016 is a transformation legislation for the Real Estate Industry. Courageous and radical provisions are included in the Act. It is hard to accept the various provisions of the Act, having practiced and followed the business without regulators over 70 years.

We call the real estate industry the second largest contributor to the GDP, taxes, employment, however there were very limited checks and balances in terms of various business practices.

Post RERA, it is inevitable for the industry, promoters or stakeholders to practice and comply with the provisions of Act, Rules, Regulations, Circulars or notifications.

Hitherto (prior RERA) most of the promoters were used to start a project without comprehending various costs associated for development of the project, they used to realise during the development, that project may not be financially viable and results 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 escalation in material, labour costs etc.,

One of the concerns of the Real Estate Industry is the collection of money from allottees, utilisation of such collected money for the purpose which was collected and utilise the collected money and enable the promoters to complete the development of the project and deliver the units to the buyers. This financial discipline is embedded in The Real Estate (Regulation and Development) Act 2016. One such provision under RERA Act is Annual Audit of Accounts of Project.

1. Legislative Framework – Reference of RERA Audit in Act and State Rules

- 3rd Proviso – Provided also 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.

Annual Audit under RERA Act	RERA Act – 3 rd proviso to sec 4(2)(l)(D)	<ol style="list-style-type: none"> Amounts collected from Allottees for a particular project have been utilised for the same project and the withdrawal has been in compliance with the proportion to the % of completion of the project Compliance to the provisions of RERA Act
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CERTIFICATE FORMAT NOTIFIED By RERA Authorities –

ON THE LETTER HEAD OF CHARTERED ACCOUNTANT

ANNUAL REPORT ON STATEMENT OF ACCOUNTS under RERA Act

(refer 3rd proviso to sec 4(2)(l)(D) of RERA Act)

To

NAME of the Project &

ADDRESS OF PROMOTER

SUBJECT: Report on Statement of Accounts on project fund utilization and withdrawal by [Project/ Promoter] for the period from DD/MM/YYYY to 31/03/2022 with respect to RERA Regn. Number _____

- This certificate is issued in accordance with the provisions of the **Real Estate (Regulation and Development) Act, 2016** read along with the XXXX State Real Estate (Regulation and Development) Rules, 2017.
- I/We have obtained all necessary information and explanation from the Promoter, during the course of our audit, which in my / our opinion are necessary for the purpose of this certificate.
- I/We hereby confirm that I/We have examined the prescribed registers, Books of Accounts and documents and the relevant records of [Project / Promoter] for the period ended 31st March 2022 and hereby certify that:
 - M/s. _____ (Promoter of the Project) have completed _____% of the project titled _____ (Name of the Project) RERA Regn.No. _____ dated DD/MM/YYYY located at _____ (full address)

ii. **Amount collected** from Allottees during the year ended 31/03/20XX for this project is Rs. _____ and amounts collected from Allottees from inception of project to till date (i.e., 31/03/20XX) is Rs. _____

iii. **Amount withdrawn** during the year for this project from Project Bank Account is Rs. _____ and total amount withdrawn from inception to till date from Project Bank Account is Rs. _____

4. I/We certify that, I/we have considered the various professional certificates i.e., Chartered Accountant Certificates, Engineer Certificate, Architect Certificates issued from time to time for withdrawal of money based on % of completion of work.
5. I/We certify that the [Name of Project and Promoter] has utilized the amounts collected for _____ project only for this project and the withdrawal from the designated bank account(s) of the said project has been in accordance with the proportion to the percentage of completion of the project.

Observation and Qualification of CA –

NIL

Or

- Promoter of the project has withdrawn in excess of eligible amount from Project Bank Account Rs. _____
- Promoter of the project has not utilized (diverted) the monies drawn from Project Bank Account Rs. _____

For XYZ & Co

Chartered Accountant

Signature of Chartered Accountant / Designation

(ICAI Membership Number.....)

Firm Name and ICAI Reg No

Name

Address

Place:

Date

UDINo -

Note –

1. Different states prescribed a format of report along with instructions.
2. This report shall be issued by a Chartered Accountant holding Certificate of Practice.
3. Chartered Accountant shall collect project financial, non-financial information from the promoter.
4. Collect estimated cost of project, escalation if any and details there on.

5. Chartered Accountant to collect and consider all professional certificates issued from time to time for withdrawal of project.
6. CA while certifying the amounts finds any deviation from the provisions of the Act, Rules, Regulations, Circulars or Orders, the same need to be listed here.
7. The example could be, the amount realized from the allottees is deposited in another account. In that case, what is the amount deposited in another account.
8. If the amount has been drawn in excess of what has been permitted under CA certificate (Form-4), how much money has been overdrawn.
9. Funds have been diverted to other projects or for other purposes, need to be reported.
10. Architect (Form-5) or Engineer (Form-6) certificate is not obtained or if there are any differences.
11. Plan sanction is upto 8th floor, and the architect certificate and also engineer certificate show about the work completed upto 10 floor and the expenses incurred on additional two floors without sanction need to be quantified and reported – Section 14 of the RERA Act to be complied with.
12. This certificate shall be submitted to authorities and is a public document. It could be made available for viewing at the portal of the regulators in the respective states. The comments in this note are purely a matter of interpretation and not binding on any regulatory authorities. Therefore, there can be no assurance that the regulatory authorities will not take a position contrary to our comments or views.

2. Responsibility of the promoters of the Real Estate Project –

- (a) Promoter to maintain the financial information and other information relating to real estate project.
- (b) Provide such information to Chartered Accountant professionals to obtain RERA Audit Report on annual basis.
- (c) Submit this report to authority online or offline.
- (d) Reconcile the receivables, received, utilized and balance money in bank account as on 31-03-2022.
- (e) Follow best practices / Standard Operating practices.
- (f) The cost of the project as per RERA has to be reconciled as per books for Audit and compliance under other statutes like GST, Income Tax, ROC etc.
- (g) Maintain and update books of accounts from time to time.
- (h) Maintenance of data as per RERA project wise in books of accounts (rather company or project wise) for better and easy reconciliation between various statutes.
- (i) Take support of consultants and experts to understand the importance, implementation as per statute.

3. Documentation and verification of records for issuance of RERA Audit Report by Chartered Accountant

- Accounting records – updated books of accounts
- Copy of application filed for registration of project under RERA Act to know the details filed by the promoter to obtain the registration
- Details of calculations considered to arrive at estimated cost of project – Land Cost and Construction Cost
- All project related documents like land documents, sanctions, clearances, NOC's – to know the cost incurred in obtaining the Sanctions, NOC's
- Amount incurred towards acquisition of land or Transferable Development Rights / Additional FSI etc.
- All bank statements of RERA project account and other bank accounts, where in money is deposited by the promoter.
- Statement of allottees / customers, list of agreement of sales entered, advances received, balance receivables etc
- Money collected from allottees, 70% deposit made to RERA project bank account.
- All government fees challans for all clearances etc.
- All development expenses bills, vouchers, invoices for both onsite and offsite expenditures.
- Advance paid for supply of materials or services vouchers, references etc.
- Variance to estimated cost of the project compared with actual incurred and reasons there on.
- Certificates of Engineer, Architect and CA for withdrawal of money based on % of completion of construction.
- Project Loan or other loan statements.
- Interest calculation / attribution or allocation towards the respective RERA project based on utilisation of funds (in case of single loan borrowed by the entity and made use for multiple project – Term loan or Overdraft).
- Indirect taxes / GST paid from time to time – reconciliation / assurance.
- TDS made by buyers @ 1 % – reconciliation / assurance

4. **Best Practices –**

- The Promoter may have appointed external professionals to obtain certificates from time to time, consult the same professional who had issued the earlier professional certificate – handover those certificates to RERA Auditor.
- The RERA Audit report must be in conformity with assurance standards issued by the ICAI.
- RERA Audit Report to be backed up with adequate documentation by way of Management Representation letter and the basis of preparing such certificates.

In case the regulators suggest a format later or issue any clarification in this regard, the above-suggested template may suitably be aligned.

5. **RERA Audit – Challenges**

- Sufficient Knowledge of Act and Rules –Both promoter and professionals
- Information filled during registration is erroneous – what stand will you take
- RERA Project wise Record / data / expenses maintenance
- Allocation of common expenses RERA project-wise
 - Basis of allocation
 - Loan availed and interest apportionment to RERA project-wise
- Reconciliation at various stages and different records
- Clarity on the statute, being new to all
- In case of single RERA registration – information from Landlord and compliance there on under RERA (being a Co- Promoter)

6. **RERA Audit – tip to professionals**

- Don't be biased on the information and report
- Don't be under the influence of Promoters / others
- Don't be casual on report / certification
- Collect sufficient documents / information before issue of report
- If you don't know, ask others
- If you are not sure – report it
- Certificates issued may become public documents and amenable under RTI

7. **FAQ's**

Sl No	Query	Provisions under the Act / solution
1	Is Audit and Report based on entities or based on RERA Registration basis?	The promoter shall get his books of accounts audited for each registered project separately, even if, those projects are registered on phase wise manner.
2	Responsibility of the Audit	The promoter shall engage / appoint a Chartered Accountant holding certificate of practice to carry out the audit. The responsibility to get the audit done is cast on the promoter.
3	Time limit to get the audit of accounts of the project	The promoter shall obtain the annual audit report within six months after the end of every financial year.

Sl No	Query	Provisions under the Act / solution
4	Any specific requirement of a chartered accountant	The auditor shall be a chartered accountant in practice.
5	How to arrive at the Estimated cost of the land	<p>The estimated cost of the land –</p> <p>The land cost means acquisition cost/purchase cost or value of land reckoned on basis of the value of the land as ascertained on the basis of guidance value in accordance with the Section 45-B of the Karnataka Stamp Act 1957 relevant on the date of registration of the real estate project whichever is higher - (Rule 5(1) of Karnataka RERA Rules, 2017)</p> <p>All other related expenses like TDR, FSI acquisition, premium payment, etc are based on the actual cost paid for which necessary support is provided.</p> <p>Interest cost on the borrowings done to purchase the land or to incur any related payment of premium etc to the Competent Authority has been included.</p>
6	How to arrive at the Estimated cost of the construction	<p>The estimated cost of construction –</p> <ul style="list-style-type: none"> Karnataka RERA Rule 5(2) defines – the cost of construction shall include all such costs, incurred by the promoter towards on-site and off-site expenditure for the development of the real estate project including payment of taxes, fees, charges, premiums, interest, etc to any competent Authority or statutory Authority

Sl No	Query	Provisions under the Act / solution
6		<p>of the central or state government including interest paid or payable to any financial institution, etc.</p> <ul style="list-style-type: none"> Wherever, the apportionment of the cost has to be done as per the policy of the company between different projects, the same has been done accordingly. The policy document for apportionment shall be prepared by the promoter for common expenses.
7	Total Estimated Cost of the Project	Total Estimated Cost of the Project = Estimated cost of the land + Estimated cost of construction.
8	Where to submit the audited accounts and report thereon	Promoter has to upload such reports and audited accounts online portal along with September Quarterly Updates.
9	Non-compliance	Authority may issue a show cause notice and may invoke penalty Section 61 of the RERA Act
10	Format of Report	The annual report on the statement of accounts to be issued in Format as notified by the Authority (K RERA – Form 7)
11	Who should sign the Audited accounts and issue the report	Form 7 shall be certified and signed by the chartered accountant who is the statutory auditor. The Chartered Accountant issuing form 7 should be a different entity that the CA who has issued certificate in form 4 for the purpose of withdrawal of amounts from the separate RERA Designated Account.

Sl No	Query	Provisions under the Act / solution
12	Different Bank Account for Pass-Through Charges	The promoter may operate a different bank account for the Pass-through Charges, Taxes collected like VAT, Service Tax, SGST, CGST & any other taxes.
13	Amount Incurred - Reference of MahaRERA -	<p>Reference of MahaRERA -</p> <ol style="list-style-type: none"> 1. Regulation 2 (v-a) - Definition of "incurred" <p>Regulation 2 (v-a) was inserted vide Amendment dated 3rd October 2019. It defined the term "incurred". The term "incurred" was defined through circular no. 7/2017 dated 4th July, 2017 and it was subsumed by Amendment dated 3rd October 2019.</p> <p>The definition of the term "incurred" has two major components -</p> <ol style="list-style-type: none"> a. The amount of product or services that the promoter has received for the real estate project should have created a debt in favour of a seller or supplier and b. It shall also include the amount of product or service received against the payment c. Advances to suppliers
14	Deposit of 100 % in case of balance realisation is less than the amount required to complete the project	Where the estimated receivables of the ongoing project is less than the estimated cost of completion of the project, then 100% of the amount to be realized from the allottees shall be deposited in the said "RERA Designated Bank Account"

Sl No	Query	Provisions under the Act / solution
15	What does mean Till Date of the Project	Amount collected / withdrawn "TILL DATE" for the Project will be 70% of the Total Amount Collected from the Allottees from INCPETITION of the PROJECT To 31 st March 2022.
16	Can Authority extend the timelines for obtaining the report of Audit of Accounts	"NO" because the time limit has been specified in the RERA Act & so it's outside the purview of the authority. It can only be done through an amendment to the act. However, the authority has the power to waive the penalty, if any applied due to non-filing of report within the due date.
17	Any other details to be uploaded along with CA report/certificate	Yes, Project audited accounts shall be uploaded along with a report. The Authorities may prescribe the format. Bihar RERA Regulations prescribes audited accounts along with directors reports to be submitted.
18	Is any guidance or book available for reference	Yes, please refer ICAI Publication on RERA. Very good publication and covered all aspects of RERA
19	Will these certificates be accessible to other statutory agencies or department	Yes, in recent days, GST department has issued show cause notice based on the estimated cost of the project as declared in RERA Application. Hence, it is important to reconcile the financial information between various statutes., RERA, GST, Income Tax, Data submitted to lenders, etc.

8. Penal action may be initiated by the Authority against professionals who have issued certificates for withdrawals or audits which are not in compliance with the Act, Rules, Regulations, Circulars, orders etc.

The Authority, in addition to taking penal actions as contemplated in the Act and the Rules, shall also take up the matter with the concerned regulatory body of the said professionals of the architect, engineer or chartered accountant, for necessary penal action against them, including dismemberment, if the form 4/7 issued by the Chartered Accountant reveals that:

- any certificate issued by the project architect, engineer or the chartered accountant has false or incorrect information and
- the amounts collected for a particular project have not been utilized for the project and
- the withdrawal has not been in compliance with the proportion to the percentage of completion of the project

Conclusion - The Audit of Accounts under RERA extends and requires the auditor to verify and report on all applicable provisions under the Act, Rules etc., the RERA authority's may notify the different format to include other provisions for the purpose of RERA Audit. The Author is a practicing Chartered Accountant, one can reach the author on vinay@vnm.ca for further clarifications

*Authors can be reached at :
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Answers to "Key Word 12" (August 2022)

1. Collusion, 2. Bankruptcy, 3. Lapse, 4. Altcoin, 5. Swap, 6. Pro Rata

Key Word : SURETY

Credits: CA. Archana Sridhar

KSCAA