



Karnataka Real Estate Regulatory Authority

#1/4, 2nd Floor, Silver Jubilee Block, Unity Building, CSI compound,
3rd Cross, Mission Road, Bengaluru-560027



Circular No: KRERA / circular / 02 / 2019

Date: 27 / 08 / 2019

Subject: Procedure for transferring or assigning promoter's rights and liabilities to a third party.

Whereas, the Chairperson, Karnataka Real Estate Regulatory Authority is vested with the powers of general superintendence and directions in the conduct of affairs of the Authority under section 25 of the Real Estate (Regulation and Development) Act, 2016.

Whereas, in accordance with Section 15 of the Real Estate (Regulation and Development) Act, 2016, the promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third Allottees, except the promoter and without the prior written approval of the Authority.

Whereas, considering various types of litigations, it is necessary to prescribe a procedure for the purpose of transfer of promoter's rights and liabilities to third party in accordance with the provisions of Section 15 of Real Estate (Regulation & Development) Act, 2016.

Therefore, the following procedure detailed herein shall be followed with immediate effect:

1. Explanation .-

(i) For the purpose of this section, changes in (internal) shareholding or constituents of a promoter's organisation, that doesn't affect obligations and liabilities with respect to the Allottee(s) and the rights and liabilities of the promoter's organization, shall not require the aforementioned approvals.

(ii) Any conversion of the promoter entity under any statute, of

- (a) Partnership Firm into LLP / Private Limited Company or
- (b) Conversion of Private Limited Company or unlisted company to a LLP or otherwise
- (c) Proprietorship change by succession to legal heirs shall not require the aforementioned approvals.

2. Cases where the transfer is initiated by the Promoter: The promoter shall have to apply to the Karnataka Real Estate Regulatory Authority with the consent of two-third Allottees as on the date of application in the project

under consideration, to seek permission to transfer its rights and liabilities to a third party. The promoter may apply to the Secretary, Karnataka Real Estate Regulatory

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Authority in the prescribed format (Annexure-A). On receipt of such application, Secretary shall initiate necessary steps to obtain approval of the Authority, which may include a personal hearing. Karnataka Real Estate Regulatory Authority shall thereafter pass an order within one month of filing of such application, by either granting approval (with or without such conditions as it may prescribe) or rejecting the same.

After receipt of the approval for the transfer from Karnataka Real Estate Regulatory Authority and thereafter within seven days of completion of the transfer, the new promoter shall then apply for necessary corrections in the existing registration details. He shall also upload required supporting documents in its name like land title, building plan approval etc. While making such application for correction, the new promoter shall upload on the web site of K-RERA, a registered agreement stating that they shall comply with all the obligations under agreement of sale executed by the erstwhile Promoter with respect to the Allottee(s) of the project and has assumed all the obligations of the erstwhile promoter under the Act.

Amalgamation or merger of the Companies, in which amalgamating company has one or more of the project registered under RERA, and which is voluntarily initiated by the promoter, after 11th July 2017, shall be regarded as transfer initiated by the Promoter and the Promoter shall have to follow the procedure prescribed herein above for obtaining the approval of the Allottee(s).

However, if the amalgamation or merger or demerger of the companies, which is not regarded as transfer under section 47 of the Income Tax Act 1961 or where 75% of the shareholders remains the same in the resultant company, the same shall not require the aforesaid approvals of Allottee(s) under section 15 of the Act.

3. Cases where the transfer is initiated by a third party like financial institutions /creditors etc by operation of law or by way of enforcing of the security. Where Secured Loan and/or the charge on the project is disclosed in the registration details of the project on the website of Karnataka Real Estate Regulatory Authority, then in such cases the promoter shall write to the Secretary, K-RERA in the prescribed format (Annexure A), within seven days of being aware of the proposed transfer arising out of enforcement of security or mortgage. The Promoter shall also simultaneously inform each and every allottee of the project of the proposed transfer. Within seven days of the transfer being effected by the financial institution or creditors, such financial institution or creditor shall intimate to each of the Allottee(s) and Secretary,

K-RERA of enforcement of the security which has resulted in the transfer of the ownership of the promoter organization or transfer of the project. The Financial Institution or creditors (acting as new promoter) or new promoter (appointed by such financial institution or creditors) shall then apply for necessary corrections in the existing registration details. New Promoter shall also upload required supporting documents in its name like land title, building plan approval etc., upon obtaining the same from time to time. While making such application for correction, the new promoter shall upload on the web site of Karnataka Real Estate Regulatory

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Authority, an undertaking stating that they shall comply with all the obligations under agreement of sale executed by the erstwhile promoter with respect to the Allottee(s) of the Project and has assumed all the obligations of the erstwhile promoter under the Act.

Example:

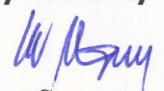
- I. Invocation of pledge of shares of the promoter organization by pledgee.
- II. Takeover of the asset of the projector of the project by Bank/ Financial Institution / Asset Reconstruction Company.
- III. Transfer of the project by the Bank/Financial Institution/Asset Reconstruction Company under relevant Insolvency and Banking Act in place.
- IV. Takeover of the management of the Promoter in case of Insolvency and Banking Act in place.

4. Procedure for updating details of new Promoter: The following procedure shall be adopted for updating details:

- (a) After receiving the application, the Secretary shall initiate action after obtaining legal opinion and seek the order of the Authority.
- (b) Karnataka Real Estate Regulatory Authority order shall be mailed to the applicant at their registered / given email address.
- (c) As per the order, new promoter may apply in correction module for change in promoter details and attach the order of the authority as supporting document.
- (d) The new promoter shall, upload in correction module from time to time, the required supporting documents in its name like amended land title, amended building plan approval etc., upon obtaining the same.

As approved by the Chairperson, Karnataka Real Estate Regulatory Authority

Date: 27th August 2019


Under Secretary,
Karnataka Real Estate Regulatory
Authority
Bengaluru.

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(On the letter head of the Promoter)

Annexure – A

Application for Change in Promoter

To,

The Karnataka Real Estate Regulatory Authority

Sir,

I/ We apply herewith for your approval to transfer or assign my/ our majority rights and liabilities in respect of real estate project to a third Party with following details:

1)	Registration number	
2)	Promoter details	
	Name	
	Organisation type	
	Address	
	Contact details	
	Email	
3)	Third Party details (Proposed promoter)	
	Name	
	Organisation type	
	Address	
	Contact details	
	Email	

We enclose herewith the following documents:

- 1) List of Allottees.
- 2) List of complaints pending or disposed before the Authority.
- 3) Consent of two-third allottees to seek permission to transfer its rights and liabilities to a third party.
- 4) List of any pending litigation or direction from any court/NCLT/NGT/ or any authorised body.
- 5) An Architect's or Engineer's Certificate disclosing the status of development of the property.
- 6) A Chartered Accountant's Certificate on the finances of the project especially with respect to a Bank Account wherein payments made by Home Buyers is deposited.
- 7) An Affidavit from the Promoter stating that the Rights of the home buyer is not adversely affected by the transfer/amalgamation.

I/We hereby declare that the details furnished above are true and correct to the best of my/our knowledge and belief and I/We undertake to inform you of any changes therein immediately. I/We declare that there is no pending case before any court / NCLT / or any authorised body regarding transfer of promoter/ my rights and liabilities with respect to this project.

I/We declare that there is no bar, in transfer of the rights and liabilities to a third party, from any of the financial institutions or financiers who have a charge on the project.

I/We further declare that there is no prohibitory order passed by any court of law against transfer of the present project to a third Party.

Thanking you,

Yours faithfully,

Signature of the authorised representative with Stamp

Place:

Date:

27/8/2019