

# NAGPUR BRANCH OF WIRC OF ICAI

## Form -3 Certificate for withdrawal from Separate Bank Account

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# Important Rules, Circulars & Orders

- The Maharashtra Real Estate (Regulation & Development) (Registration of Real Estate Project, Registration of Real Estate Agents, Rates of Interest & Disclosures on Website) Rules, **2017 dated 20<sup>th</sup> April 2017 & (Amendment) Rules, 2019 dated 06<sup>th</sup> June 2019.**
- **Circular No.5/2017** dated 28<sup>th</sup> June 2017 – Clarification on Operating Designated Bank A/c
- **Circular No.7/2017** dated 4<sup>th</sup> July 2017 – Clarification on CA Certificate
- **Office Order dated 11<sup>th</sup> May 2017** – Clarification on Withdrawals in the case of Co-promoter.
- **Circular No.12/2017** dated 4<sup>th</sup> July 2017 – Promoter Land owner & Investor having Area revenue share in Real Estate Project.
- The Maharashtra Real Estate Regulatory Authority (General) (Amendment) Regulations, 2021. – **(Old Forms were replaced with New forms)**

# Important Rules, Circulars & Orders

- **Circular No. 29/2021** dated 09/04/2021 - Promoter's disclosure of sold book inventory (building wise) in the project.
- **Order No. 18/2021** dated 28/07/2021 - Financial Quarter Based Project Progress Reporting System.
- **Circular No. 39/2021** dated 28/12/2021 & **39A/2022** dated 17/03/2022 - Submission of certificates (Form 1,2,3) to banks for withdrawal of 70% funds operating separate bank account. (It supersedes circular no.03/2017 dated 07.06.17)
- Order No. **33/2022** dated 05/07/2022 – Regular updates on Registered Projects by Promoter. (**Modifications to the Order No. 18/2021 dated 28/07/2021**)
- Order No. **34/2022** dated 27/07/2022 - Declaration about Separate Bank Account for real estate project. (**It's a declaration about separate bank account in which 70% of the funds will be deposited**)

## Circular No.5/2017 dated 28<sup>th</sup> June 2017

- ❑ There should not be any **Double Counting of costs**.
- ❑ Development Cost/ Cost of Construction of project should **NOT** include
  - ❖ **Marketing & Brokerage** towards **Sale of Apartment**.
- ❑ In form 3, Field 1(ii){c}, (CA Certificate) only interest payable to Financial Institution, Scheduled banks, NBFC or money lenders on construction funding or money **borrowed for construction** should be added to total cost of construction.
  - ❖ The principal sum should be mentioned in the form for information purpose only..
  - ❖ The principal sum should not be added to the total cost of construction as this cost is already included in 1 (ii){a}.

## Circular No.7/2017 dated 4<sup>th</sup> July 2017

- a. (Total estimated cost of the project) \* (proportion of the cost incurred on construction & land cost to the total estimated cost) Shall determine the maximum amount which can be withdrawn from Separate Bank A/c (designated Bank A/c)(70% account).
- b. The Promoter shall be required to obtain the certificates for **every withdrawal** from Separate Bank A/c till the Occupancy Certificate (OC) or Completion Certificate (CC) is obtained. **(Amended by circular no. 39 & 39A)**
- c. On receipt of the Occupancy Certificate (OC/CC) entire balance amount lying at the Separate Bank A/c can be withdrawn by the Promoter.
- d. The expression **“incurred”** would mean amount of product or services received, creating a debt in favour of a seller or supplier and shall also include the amount of product or service received against the payment. **(Covered also in First Amendment to General Regulation)**

## Circular No.7/2017 dated 4<sup>th</sup> July 2017

### • Land Cost:

- ~~e. To determine the fair market value of the Acquisition cost of Land or Development Rights or Lease Rights in the Real Estate Project, the Acquisition cost shall be the “Indexed Cost of Acquisition”.~~
- ~~f. If, the Land or Development Rights or Lease Rights became property of the Developer or became available to the Developer before 1<sup>st</sup> day of April 2001, the cost of acquisition should mean the ASR value of such Land or Development Rights or Lease Rights as on 1<sup>st</sup> day of April 2001.~~
- ~~g. The Acquisition cost shall also include the amount of interest incurred on the borrowing done specifically for purchase of Land or Acquiring Development Rights or Lease Rights.~~

Please Note: Above rules not applicable after 6<sup>th</sup> June 2019 due to The Maharashtra Real Estate (Regulation & Development) (Registration of Real Estate Project, Registration of Real Estate Agents, Rates of Interest & Disclosures on Website) (Amendment) Rules, 2019 dated 06<sup>th</sup> June 2019.

## Circular No.7/2017 dated 4<sup>th</sup> July 2017

### Rehabilitation Scheme Cost:

- h. Cost under Rehabilitation Scheme shall include cost incurred for construction of area to be handed over to
  - 1. Slum dwellers, Tenants, Apartment Owners,
  - 2. Government or Concessionaire in PPP project
  - 3. Appropriate Authority under various schemes under Development Regulation
- i. All amount payable to above parties specified from (1) to (3) above which are not refundable and are incurred as cost and expenses shall be allowed as part of Land cost under clause 1(i)f(iii) or 1(i)(f)(iv) of the CA certificate. For example Maintenance Deposits, corpus Amount, Concession Premium or fees, Shifting charges, Rental charges to name a few
- j. The interest incurred on the borrowing done specifically for construction of rehabilitation component shall be included in the interest payable to financial institutions etc. under the head of Land Cost.

## Circular No.7/2017 dated 4<sup>th</sup> July 2017

- k. In the certificate, the Principal sum of loan shall not form part of the Development Cost & only interest amount shall be uploaded.
- l. The expression “Amount Withdrawn till the date of the certificate as per the Books of Accounts and Bank Statement” appearing at Clause 7 of Form 3 of CA Certificate means the amount withdrawn from the Separate Bank Account as per the Books of Accounts and Bank Statement of that Separate Bank Account.
- m. The CA has to verify & Certify that **70%** of the amount collected from Allottees (other than Pass Through Charges and Indirect Taxes) are deposited in the separate account.
- n. Separate Bank A/c has to be a **No-Lien A/c**. The funds can be utilized for creating No-lien Fixed Deposit & no loan can be obtained against such deposit.
- o. In case FD being made from the monies lying in the Separate account, then the CA shall verify that there is **no lien or charge** on such fixed deposit. The promoter and / or CA shall obtain the no lien / charge certificate in respect to such FD, from the bank once **every three months**.



## Circular No.7/2017 dated 4<sup>th</sup> July 2017

- p. The Promoter to deposit the **Pass Through Charges** (amount collected for and on behalf of Legal Entity or Apex Body or any Statutory Authority or local body) should be deposited preferably in a designated bank account opened just for the purpose of depositing such Pass Through Charges or in any other bank account of the Promoter and should not be deposited in the Separate bank account. However, Promoter shall be required to give account of the monies collected as Pass Through Charges to the Legal Entity or Apex Body.
- q. **The Indirect taxes** collected by the Promoter from the Allotees in the nature of Service Tax/ VAT/GST etc can also be deposited in a bank account, other than the Separate Bank Account & Shall be dealt with as per the provisions of the statute governing such indirect taxes.
- r. **Income Tax** paid by the Promoter of a Real Estate Project, shall not be allowed to be claimed as cost of the Real Estate Project.

## Circular No.7/2017 dated 4<sup>th</sup> July 2017

- s. The Authority recommends that the amount withdrawn from the Separate account should preferably be utilized for the purpose of completion of the Real Estate Project. However, there is no end use restriction on the amount which is withdrawn from the Separate account.
- t. **Cancellation amount(s)**, if any, to be paid by the Promoter to the Allottees on cancellation of booking / allotment of the Apartment, should be treated as cost incurred for the project and the same can be withdrawn from the Separate Bank A/c, to the extent of 70% of the amounts to be paid to the Allottee on cancellation of the booking / allotment, since only 70% of the amount realized from the Allottee would have been deposited in the Separate Bank Account.
- u. **The Compensation / Interest** paid by the Promoter to the Allottees should be treated as cost incurred for the project and hence the entire sum required to be paid by way of compensation / Interest to the Allottee can be withdrawn from the Separate Bank A/c.

# Office Order dated 11<sup>th</sup> May 2017

## Clarification on Withdrawals in the case of Co-promoter

- Promoters enter into agreement with Individuals / organisations by which they are entitled to a share of the total revenue generated from sale of apartment or share of the total area developed for sale.
  - For Example, a landowner may handover his land to a promoter & in return is entitled to 25% of the apartments developed or
  - 25 % of the revenue generated from sale of apartments or
  - an investor gives money to the promoter at an initial stage of the project launch & through an agreement or arrangement is entitled for 25% share of the total area developed, which is constructed by the promoter but marketed and sold by the investor.

## Office Order dated 11<sup>th</sup> May 2017

In Such cases, the sale proceeds to these individuals should not be considered as cost of the project & withdrawn from designated bank account merely by virtue of this arrangement

- For withdrawing the amount from the Designated Bank A/c, these individuals / organizations should be considered as Promoters & hence shall be termed as Co-promoter.
- Each of the Co-promoter entitled to share of the total area developed, should open separate bank account for deposit of 70% of the sale proceeds realized from the allottees.

## Amended Rules dated 6<sup>th</sup> June 2019

**For Explanations I and II, the following Explanation shall be substituted.**

**❑ *Explanation I.***—In ascertaining the cost of completion of percentage of the project, the land cost shall be reckoned on basis of the value of the land as ascertained from the Annual Statement of Rates (ASR) prepared under the provisions of the Maharashtra Stamp Act, relevant on the date of registration of the real estate project.

**Because of this change the Land Cost has to valued at ASR value prevalent for project land on the date of registration of the real estate project.**

**❑ Actual Price of Land is irrelevant**

**❑ Which ASR value should be taken Agricultural value or NA Value for plots?**

**❑ Registration with MahaRERA or under the Maharashtra Stamp Act?**

## Amended Rules dated 6<sup>th</sup> June 2019

The existing Explanation III and IV shall be renumbered as Explanation II and III respectively

- ***Explanation IV.***—all cost items should be mutually exclusive. There should not be any double counting of costs.
- ***Explanation V.***—The development cost or cost of construction of the project shall not include marketing and brokerage expenses towards sale of apartments. Such expenses though part of the project cost, should not be borne from the amount that is required to be deposited in the designated separate account.”
- **Explanation IV & V were already covered by circular No. 5/2017 dated 28<sup>th</sup> June 2017.**

# Examples: How to calculate land value

	<b>ASR 22-23</b>	<b>ASR 23-24</b>	<b>Amount Paid</b>	<b>Total Deal</b>
<b>Land Cost</b>	<b>1,00,000</b>	<b>1,15,000</b>	<b>1,50,000</b>	<b>1,50,000</b>
<b>Land Cost</b>	<b>1,00,000</b>	<b>1,15,000</b>	<b>1,00,000</b>	<b>1,50,000</b>
<b>Land Cost</b>	<b>1,00,000</b>	<b>1,15,000</b>	<b>50,000*</b>	<b>1,50,000</b>
<b>Land Cost</b>	<b>1,00,000</b>	<b>1,15,000</b>	<b>95,000</b>	<b>95,000</b>
<b>Land Cost</b>	<b>1,00,000</b>	<b>1,15,000</b>	<b>50,000*</b>	<b>95,000</b>

# Illustration: Own Contribution Calculation

	Project 1	Project 2	Project 3	Project 4
Land Cost ASR 23-24	1,15,000	1,15,000	1,15,000	1,15,000
Land Cost Incurred	1,50,000	1,00,000	50,000	95,000
Land Cost (total deal)	1,50,000	1,50,000	95,000	95,000
Construction Cost	2,00,000	2,00,000	2,00,000	2,00,000
Professional Payments, Electricity, watchman, etc	50,000	50,000	50,000	50,000
Total Cost Incurred	4,00,000	3,50,000	3,00,000	3,45,000
<b>As per RERA (Incurred)</b>	<b>3,65,000</b>	<b>3,50,000</b>	<b>3,00,000</b>	<b>3,65,000</b>
Loans	1,00,000	1,00,000	1,00,000	1,00,000
Customer Booking	1,25,000	1,25,000	1,25,000	1,25,000
Own Capital	1,40,000	2,25,000	75,000	1,20,000



# Illustration: When new certificate to be issued

<b>Particulars</b>	<b>Amount in ₹</b>	<b>Balance in ₹</b>	<b><u>Period of certification</u></b>	<b><u>Date of Withdrawal</u></b>
<b>Limit provided by Form-3 at registration</b>	<b>100</b>	<b>100</b>	<b>15.07.22</b>	<b>15.09.22</b>
<b>Less: Withdrawal 1</b>	<b>20</b>	<b>80</b>	<b>15.07.22</b>	<b>19.10.22</b>
<b>Less: Withdrawal 2</b>	<b>30</b>	<b>50</b>	<b>15.07.22</b>	<b>21.10.22</b>
<b>Less: Withdrawal 3</b>	<b>30</b>	<b>20</b>	<b>30.09.22</b>	<b>30.11.22</b>
<b>Less: Withdrawal 4</b>	<b>20</b>	<b>0</b>	<b>30.09.22</b>	
<b>Less: Withdrawal 5</b>				

Thank you