



MANAGING LIQUIDITY IN RERA REGIME

15th May, 2017

The Real Estate (Regulation and Development) Act, 2016 (“the Act”) has come into force with effect from 1st May, 2016 throughout India.

One of the major provisions contained in the Act, relates to the retention of 70% of the amounts received from customers in a separate account to be maintained by a Scheduled Bank (“the RERA Account”). Sub-clause (D) of Clause (1) of Sub-section (2) of Section 4 of the Act, inter-alia, provides the manner in which the amounts so deposited can be withdrawn i.e, ‘in proportion to the percentage of completion of the project’.

The Act requires a chartered accountant in practice to certify the aforesaid costs and proportions.

In terms of Section 84 of the Act, the State Governments in respect of States and the Central Government in respect of Union Territories, have been given the power to make Rules in relation to the provisions of the Act. In pursuance of the aforesaid, the Government of Maharashtra has made the Maharashtra Real Estate (Registration of real estate projects, Registration of real estate agents, rates of interest and disclosures on website) Rules, 2017 (“the Rules”).

Rule 5 of the Rules provides for the manner in which the amounts deposited in the RERA Account can be withdrawn. There are 4 Explanations to the Rules which determine the manner in which ‘cost of land’, ‘cost of construction’ and the ‘proportion to the percentage of completion’ are to be computed.

This presentation seeks to discuss, with examples, the manner in which, the aforesaid provisions would operate in an organisation.



**Calculation of the amounts to be parked in the separate account
and amounts that can be withdrawn from the separate account
as per the provisions of the RERA Act**

COMPUTATION BASED ON THE ACT

DV

PARTICULARS		ACTUAL FIGURES	AS PER RERA	REMARKS
Amount realized for the real estate projects from the allottees		1600	1400	Under RERA the amounts realized are to be considered, whereas in financial statements, the revenue may be booked as per generally accepted accounting principles.
Amount that can be utilized without any restrictions	30%		420	Can be used for payment to lenders or for other projects
Amount to be parked in separate account subject to be withdrawn in following manner	70%		980	The amount so determined is eligible amount that can be withdrawn irrespective of the amount lying in the separate account
Amount that can be withdrawn = % of completion * Amount in separate A/c		637	637	There may be working capital gap
Percentage of completion		65%	65%	% of completion is not defined under the law. % of completion shall be determined by Architect and will be considered as base for the calculation of the percentage. CA will certify the amount incurred and the estimated amount.
Cost of Land - A		280	280	
Cost of Construction - B		515	515	
Cost of Construction and cost of Land - (A + B)		795	795	
TOTAL ESTIMATED COST OF PROJECT		1300	1300	

COMPUTATION BASED ON THE ACT

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	PARTICULARS	ACTUAL FIGURES	AS PER RERA	REMARKS
	COST OF LAND - (defined under explanation I,II & IV to Rules 5)	280	280	
a	Cost of acquiring ownership and title of land	20	20	
	Stamp duty value of the property to be considered if received under inheritance or gift - as per explanation III to Rule 5		0	This will not form part of cost under as per RERA Act
b	Lease charges	20	20	
c	Overhead cost	20	20	These shall form part of land under RERA Act to the extent they can be attributed towards land acquisition.
d	Marketing cost for acquisition of land	20	20	
e	Legal cost	20	20	
f	Supervision	20	20	
g	Consideration to outgoing developer to relinquish ownership and title rights over land parcels	20	20	
h	Amount payable to authorities for stamp duty, transfer charges, registration fees etc.	20	20	
j	Principal sum payable to FI including scheduled banks, NBFC or money lender registered under money lender law for purchase of land or development rights to be excluded.			This cannot form part of the Cost of Land or the Cost of Construction.
k	Interest payable to FI including scheduled banks, NBFC or money lender registered under money lender law for purchase of land or development rights to be excluded.	10	10	Interest on loan for land specifically excluded in the Rules and not under the Act. This may form part of cost of land if nexus can be shown. Till land acquisition the interest shall form part of land.

COMPUTATION BASED ON THE ACT

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	PARTICULARS	ACTUAL FIGURES	AS PER RERA	REMARKS
	In case of rehabilitation scheme following amounts to be included (under certificate of CA and Architect or engineer): (As per explanation IV to Rule 5)			
	Cost prior to registration of project			
m	Onsite expenditures to be made before registration of real estate project, such as expenditure towards clearance of land of encumbrances for temporary transit accommodation	20	20	As per rules these are to be specifically included in the cost of land as per Rules. Act is silent of this aspect. However a view can be taken that these costs should form part of cost of land, if they are incurred in connection with the purchase of land.
n	Overhead costs	20	20	
o	ASR linked Premium, Fees and Charges, Security Deposits, etc. to any competent authority or statutory authority	20	20	
p	Interest payable to financial institutions for purchase of land or development rights to be excluded.	50	50	Interest on overhead cost, marketing cost and such other working capital requirements pertaining to land also to be excluded only under Rules. Under general parlance interest can be loaded on the land cost if nexus can be shown.

COMPUTATION BASED ON THE ACT

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	PARTICULARS	ACTUAL FIGURES	AS PER RERA
	COST OF CONSTRUCTION (defined under Explanations IV and III to Rule 5)	515	515
	Land Costs after registration of the project (Explanation IV to Rule 5)		
a	Onsite expenditures to be made after registration of real estate project, such as expenditure towards clearance of land of encumbrances for temporary transit accommodation	30	30
b	Construction of rehabilitation buildings	30	30
c	Overhead costs	30	30
d	ASR linked Premium, Fees and Charges, Security Deposits, etc. to any competent authority or statutory authority	30	30

COMPUTATION BASED ON THE ACT

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	PARTICULARS	ACTUAL FIGURES	AS PER RERA	
	Cost of construction (defined under Explanation III to Rule 5)			
e	Onsite and offsite expenditure for the development of the real estate project	200	200	
f	Taxes, fees, charges, premium, interest payable to authorities	40	40	
g	Principal sum to FI including scheduled banks, NBFC or money lender registered under money lender law	0	0	No specific provision under the Act to include the principal amount
h	Interest payable to FI including scheduled banks, NBFC or money lender registered under money lender law	15	15	
i	Construction of rehabilitation buildings before registration of project	30	30	
j	Premium to obtain development rights			
k	Amount towards TDR	40	40	
i	ASR linked premiums payable by the Promoter	20	20	
l	Premium for grant of FSI	50	50	

COMPUTATION BASED ON THE ACT

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	PARTICULARS	ACTUAL FIGURES	AS PER RERA	
	Total estimated cost of project [defined under RERA Act - sec 2(v)]	1300	1300	
a	Construction cost involved in developing the real estate project	400	400	
b	Land Cost	600	600	
c	Taxes & cess	100	100	
d	Development and other charges	100	100	
e	Maharashtra RERA Manual specifically provides for inclusion of principal payable to lenders in the definition of estimated cost of completion of project whereas definition in Act is silent	0	0	
f	Maharashtra RERA Manual specifically provides for inclusion of interest payable to lenders in the definition of estimated cost of completion of project whereas definition in Act is silent	100	100	

**Calculation of the amounts to be parked in the separate account
and amounts that can be withdrawn from the separate account
as per the provisions of the Maharashtra RERA Rules**

COMPUTATION BASED ON THE RULES

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PARTICULARS		ACTUAL FIGURES	AS PER RERA	REMARKS
Amount realized for the real estate projects from the allottees		1600	1400	Under RERA the amounts realized are to be considered whereas under accounting the revenue may be booked on accrual basis.
Amount that can be utilized without any restrictions	30 per cent		420	Can be used for payment to lenders or for other projects.
Amount to be parked in separate account subject to be withdrawn in following manner	70 per cent		980	The amount so determined is eligible amount that can be withdrawn irrespective of the amount lying in the separate account.
$\frac{=(\text{cost of construction}+\text{cost of land}) * \text{Total estimated cost of project}}{\text{(total estimated cost of the Project)}}$			875	Since here the amount withdrawn is as per the cost incurred and not based on the architect's certificate of percentage of completion of the project, the funds can be withdrawn even though the construction is at preliminary stage.
Cost of Land - A		370	350	
Cost of Construction - B		375	525	
Cost of Construction and cost of Land - (A + B)		745	875	
TOTAL ESTIMATED COST OF PROJECT		1300	1600	

COMPUTATION BASED ON THE RULES

D/

	PARTICULARS	ACTUAL FIGURES	AS PER RERA	REMARKS
	COST OF LAND - (defined under explanation I,II & IV to Rules 5)	370	350	
a	Cost of acquiring ownership and title of land	20	20	
	Stamp duty value of the property to be considered if received under inheritance or gift - as per explanation III to Rule 5		30	
b	Lease charges	20	20	
c	Overhead cost	20	20	
d	Marketing cost for land aquisition	20	20	
e	Legal cost	20	20	
f	Supervision	20	20	
g	Premium to obtain development rights	20	20	
h	Amount towards TDR	20	20	
i	Premium for grant of FSI	20	20	
j	Consideration to outgoing developer for relinquishment of rights in the land	20	20	
k	Amount payable to authorities for stamp duty, transfer charges, registration fees etc.	20	20	
l	ASR linked premiums payable by the Promoter	20	20	
m	Principal sum payable to FI including scheduled banks, NBFC or money lender registered under money lender law for purchase of land or development rights to be excluded.			This cannot form part of the Cost of Land or the Cost of Construction.

COMPUTATION BASED ON THE RULES

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	PARTICULARS	ACTUAL FIGURES	AS PER RERA	REMARKS
	In case of rehabilitation scheme following amounts to be included (under certificate of CA and Architect or engineer): (As per explanation IV to Rule 5)			
	Cost prior to registration of project			As per rules these are to be specifically included in the cost of land
n	Onsite expenditures to be made before registration of real estate project, such as expenditure towards clearance of land of encumbrances for temporary transit accommodation	20	20	
o	Construction of rehabilitation buildings	20	20	
p	Overhead costs	20	20	
q	ASR linked Premium, Fees and Charges, Security Deposits, etc. to any competent authority or statutory authority	20	20	
r	Interest payable to financial institutions for purchase of land or development rights to be excluded.	50		Interest on overhead cost, marketing cost and such other working capital requirements pertaining to land also to be excluded

COMPUTATION BASED ON THE RULES


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	PARTICULARS	ACTUAL FIGURES	AS PER RERA
	COST OF CONSTRUCTION (defined under Explanations IV and III to Rule 5 and not defined under the Act)"	375	525
	Land Costs after registration of the project (Explanation IV)		
a	Onsite expenditures to be made after registration of real estate project, such as expenditure towards clearance of land of encumbrances for temporary transit accommodation	30	30
b	Construction of rehabilitation buildings	30	30
c	Overhead costs	30	30
d	ASR linked Premium, Fees and Charges, Security Deposits, etc. to any competent authority or statutory authority	30	30
	COST OF CONSTRUCTION (defined under Explanation III)		
e	Onsite and offsite expenditure for the development of the real estate project	200	200
f	Taxes, fees, charges, premium, interest payable to authorities	40	40
g	Principal sum to FI including scheduled banks, NBFC or money lender registered under money lender law (excluding the sum raised for purchase of land or development rights)	0	150
h	Interest payable to FI including scheduled banks, NBFC or money lender registered under money lender law (excluding the sum raised for purchase of land or development rights)	15	15

COMPUTATION BASED ON THE RULES

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	PARTICULARS	ACTUAL FIGURES	AS PER RERA
	Total estimated cost of project [defined under RERA Act - sec 2(v)]	1300	1600
a	Construction cost involved in developing the real estate project	400	400
b	Land Cost	600	600
c	Taxes & cess	100	100
d	Development and other charges	100	100
e	Maharashtra RERA Manual specifically provides for inclusion of principal payable to lenders in the definition of estimated cost of completion of project whereas definition in Act is silent	0	300
f	Maharashtra RERA Manual specifically provides for inclusion of interest payable to lenders in the definition of estimated cost of completion of project whereas definition in Act is silent	100	100



Notes, issues and penalties in respect of the amounts to be parked in the separate account and amounts that can be withdrawn from the separate account

- 1 The amount can be withdrawn from the separate account only after the Promoter submits certificate from architect, CA, engineer.
- 2 As per Act, the certificate from an engineer, an architect and a CA in practice that the withdrawal is in proportion to the % of completion of the project
- 3 As per Act, CA to certify 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.
- 4 **As per the rules:**
 - A certificate from a practicing CA, for the cost incurred on construction cost and the land cost, the proportion of the cost incurred on construction and land cost to the total estimated cost of the project.
 - Certificate from the project Architect certifying the percentage of completion of construction work of each of the building / wing of the project;
 - Second, a certificate from the Engineer for the actual cost incurred on the construction work of each of the building / wing of the project;
- 5 **As per the provisions of the act:**
 - CA should be a practising CA
 - ‘Engineer’ is defined to mean a person who possesses a bachelor’s degree or equivalent from an institution recognised by the All India Council of Technical Education or any University or any institution recognised under a law or is registered as an engineer under any law for the time being in force;

- 6 As per FAQ no 46 - Project finance can be withdrawn from 70% account if declared at the time of registration subject to the provisions of the Act and the Rules and the funds shall be utilized towards construction expenses of the project.
- 7 Under FAQ no 47 - In case of joint development with land owner on revenue share basis or area share basis, whether land owner's component could be withdrawn from designated account of 70%? - The Act makes both the Promoters and the land owner or any such parties which are beneficiary of a sale of a project and receive payments from allottees, as Co-Promoters and hence liable to adhere to the provisions of the act and the rules.
- 8 As per FAQ no 48 - Money collected from allottees towards stamp duty, registration, share money for society, deposits for maintenance, corpus funds, infrastructure charges, parking charges etc., are required to be deposited in the designated bank account (70%).
- 9 As per FAQ No. 57 - Estimated cost of the whole project that has been put up for registration has to be indicated while applying for registration.
- 10 As per FAQ no 60 - escrow account opened with the Bank from whom loans are availed, shall not be treated as Separate Bank Account for a MahaRERA registered project.
- 11 As per FAQ no 61 there cannot be multiple separate accounts in case there are multiple lenders.
- 12 As per sec 60, contravention of Section 4 (application for registration of Project) by the Promoter dealing inter alia with the amounts that can be withdrawn by the Promoter attracts penalty of 5% of the estimated cost of the Project.

- 1** For new projects, the rules prescribe that the procedure of obtaining 3 certificates to continue till OC is obtained. Rules and Act silent on the same for ongoing projects.
- 2** For new projects the rules prescribe that after obtaining completion certificate, amount lying in separate account can be withdrawn. No such provision under Act or rules for the ongoing project.
- 3** In case of ongoing projects, the rules prescribe that in case the estimated receivables are less than the estimated cost of project, then entire amount to be parked in separate account. Whereas no such provision if new project subsequently goes in loss.

Note:- The RERA Rules have not been notified by the Government of Karnataka. However, a review of the draft rules, published by the Government for public comments indicate as under.

- 1** The land cost shall be the cost incurred by the promoter, whether as an outright purchase, lease charges etc.
- 2** The construction cost shall be the cost incurred by the promoter, towards the on-site expenditure for the physical development of the project.

Issues in Karnataka Rules

Whether construction cost shall exclude off-site expenditure ? The language of the rule does not use the word “construction cost includes” it says “construction cost shall be”.

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THANK YOU

