



Form – 5 : Annual Statement of Accounts

Important aspects of certificate in form 5

Check list for verification

Precautions to be taken

Overview

- RERA strives to ensure greater **Financial Discipline, Transparency, Efficiency and Professionalism.**
- RERA provides for involvement of professionals like
 - Chartered Accountants (Form 3 & 5),
 - Architect (Form 1 & 4),
 - Engineer (Form 2 & 2A) and
 - Advocates (Search Report, Encumbrance Certificate, Drafting of Agreement to Sale)
- RERA brings standardization and authenticity of information by:
 - Registration of the project and disclosure of information on its website
 - updating the information regularly by the promoter on the RERA website
 - Model form of Agreement to Sale is prescribed
 - Simple and efficient system of filing of complaints and appeals
 - Providing for penal provisions on promoter, agent and allottees for any contravention of the provisions etc.

ACT

Important Sections

- 2 (s) - “Development”
- 2 (t) - “Development works”
- 2 (v) - “Estimated cost of Real estate Project”
- 2 (w) - “External development works”
- 2 (zb) - "Internal development works"
- **4 (2) (1) (D) - Promoter to deposit 70% of amount realized in SEPARATE Designated account.**
- **Third proviso to 4 (2) (1) (D) - Promoter to get his accounts audited by a Chartered Accountant in Practice.**

Legal Provisions

RULES

- 2 (e) - "ASR" or "Annual Statement of Rates"
- 2 (p) - "Phase of a Real Estate Project"
- 2 (q) - "Redevelopment Scheme"
- Rule 5 – Withdrawal of amounts deposited in **SEPARATE** Designated account
- **Amendment Rules, 2019 notified on 6th June 2019.**

REGULATIONS

Legal Provisions

- Regulation 3 - Format of Certificates (Form 1 to Form 4)
- **Regulation 4 (a) - Issuance of “The Annual report on Statement of accounts” in Form 5 by CA.**
- Maharashtra Real Estate Regulatory Authority (General) (Amendment) Regulation 2021 dtd. 22nd Dec 2021 amended Regulation 4(a), Explanation 1 & 2 and replaced the words “ Statutory Auditor” by **“Annual Auditor”** & **replaced Old Forms with New Forms.**

SN	Date	Reference	Subject Matter
1	11.05.17	Office Order Maha-RERA/LA/32/2017	Clarification on withdrawal in the case of Co-Promoter. (Replaced by Circular no. 12)
2	31.05.17	Circular 1/2017	Clarification regarding "License Number" of engineer
3	31.05.17	Circular 2/2017	Recognition of heads of Finance Department of government controlled development authorities, autonomous bodies etc
4	07.06.17	Circular 3/2017 (Updated 39 & 39A/2022)	Self Declaration to be submitted by the promoter to the bank Submission of Forms to bank for withdrawal
5	28.06.17	Circular 5/2017	Clarification on Operating Designated Bank A/c
6	04.07.17	Circular 7/2017	Clarification on CA Certificate
7	17.07.17	Circular 8/2017	<u>Standard Operating Procedure for Updating Registered Projects and Revising / Correcting Information with respect to Registered projects and Registered Real Estate Agents</u>

SN	Date	Reference	Subject Matter
8	08.11.17	Circular 11/2017	Procedure for Transferring or Assigning Promoter's Rights and Liabilities to a Third Party. Circular No 24/ 2019
9	04.12.17	Circular 12/2017	Landowners / Investors having Area / Revenue Share in Real Estate Project to be treated as Promoter (landowner / investor) (Order dated 14-11-17 by passed by Hon'ble Bombay Highcourt in WP(L) No.2023 of 2017
10	04.12.17	Circular 13/2017	For all the 4346 registered projects, Co- Promoter will be known as Promoter (Land owner / Investor)
11	01.11.17	Circular 14/2017	Amendment to the <u>Circular no. 8</u> on Standard Operating Procedure for Updating Registered Projects and Revising / Correcting information with respect to Registered Project and Agents
12	26.11.18	Circular 21/2018	Circular on Disclosure of Information Regarding Project Professionals
13	28.03.19	Order 8/2019	Revocation of Registration of Project
14	04.06.19	Circular No 24/ 2019	<u>Revised - Procedure for Transferring or Assigning Promoter's Rights and Liabilities to a Third Party</u> (earlier circular no 11)

SN	Date	Reference	Subject Matter
14A	23.07.21	Circular No 24A/ 2019	Clarification issued to circular No. 24.
15	02.04.20	Order 13/2019	Revision of Project Registration Validity and Extended Timeline for Statutory Compliances, in view of Covid 19 Pandemic
16	18.05.20	Order 14/2020	Invoking Force Majeure for Covid-19 Pandemic
17	09.04.21	Circular No 29/ 2021	<i>Promoter's disclosure of Sold / Booked Inventory (Building Wise) in the Project.</i>
18	07.06.21	Circular No 32/ 2021	Standardized Format for Declaration about Commencement Certificate. (Format -D)
19	25.06.21	Corrigendum to Circular No 29/ 2021	<i>Promoter's disclosure of Sold / Booked Inventory (Building Wise) in the Project. (to be tallied with "Annexure – A" issued by CA in form -3)</i>
20	27.05.22	Disclosure of Information in Public Domain	<i>Following documents Uploaded will be available in Public domain – Form 1, 2, 2A, 4 & 5</i>

Section 4(2)(I)(D) with Proviso

- (D) that **seventy percent** of the amounts realized 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:** Provided 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:** Provided further 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:

Section 4(2)(I)(D) with Proviso

- **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 utilized for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.*

Regulation 4 of MahaRERA (General) Regulations 2017

- **Regulation 4** prescribes the promoter to additionally upload the following details :—
- (a) *The annual report on statement of accounts, in Form 5 duly certified and signed by the chartered accountant who is the statutory “annual” auditor of the promoter’s enterprise.*
- **Explanation 1**:— *The chartered accountant certifying the progress of the registered real estate project for the purpose of withdrawal of amounts from the separate account should be a different entity than the chartered accountant who is the statutory—**annual auditor of the promoter’s enterprise.***

Regulation 4 of MahaRERA (General) Regulations 2017

- **Explanation 2**:– *If the Form 5 issued by the statutory “annual” auditor 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, 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*

Regulation 4 of MahaRERA (General) Regulations 2017

- “The said certificate is **only** in respect of the amount to be **deposited and withdrawn from the separate Bank Account**. The Chartered Accountant shall further certify that the withdrawal from the Separate Bank Account of the said project has been in accordance with the proportion to the percentage of completion of the project.”

(para in inverted comma is inserted by MahaRERA (General) (Amendment) Regulations, 2019 on 3rd October, 2019) (This point was earlier covered in Circular – 7)

Regulation 4 of MahaRERA (General) Regulations 2017

- {"2(v-a) **Incurred** amount of product or services received, creating a date in favour of a seller or supplier and shall also include the amount of product or services received against the payment."}

(para in inverted comma is inserted by MahaRERA (General) (Amendment) Regulations, 2019 on 3rd October, 2019) (This point was earlier covered in Circular – 7)

Is it a Audit or Certification?

- **Ascertaining facts in respect of the two aspects:**
 - that the amounts collected for a project have been utilized on the project; and
 - that the withdrawals made from time to time from the separate bank account were made in accordance with the percentage of completion of the project.
- **RERA does not prescribe the auditor to express any opinion on accounts**
- **Difference between Audit and Certification**
- **The RERA contemplates obtaining the certificate and not audit report**

Important Questions while certifying Form-5

- Is it a Audit of separate RERA Designated Bank Account?
- Is it a Project wise Audit?
- Who's responsibility to get accounts audited?
- What's the Time Period to complete the audit?
- Who are qualified to be an auditor as per 3rd Proviso?
- What records and documents to be verified by Auditor?
- Whether documents to be verified includes Form -1, 2 & 3?
- **Audit Certificate:** The auditor after completing the verification and audit shall certify that
 - the amounts collected for a particular project have been utilized for the project and
 - the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

Other Important
aspects while
certifying
Form -5

- **All the provisions applicable for issuing the form 3 are as it is also applicable for issuance of the audit certificate in form 5**
- **Different Bank Account for Pass Through Charges**

Particulars	Form - 3	Form-5
Purpose of Forms	Certificate for withdrawal of funds from a separate account.	Annual report on the statement of accounts from Statutory auditor.
Section	Second proviso to section 4(2)(1)(D)	Third proviso to section 4(2)(1)(D)
Regulation	Regulation 3	Regulation 4
Frequency	<ul style="list-style-type: none"> •Project Registration. •Promoter wishes to withdraw amount from separate account. • Promoter wants to update the incurred cost of land and construction on quarterly basis. 	Annually within 6 months from the end of the financial year i.e., 30th September.
Who can Certify?	Practicing Chartered Accountant (CA) other than the Annual Auditor or the Auditor entity issuing form 5.	Annual auditor or a different CA who has been engaged by promoter to get the accounts audited but cannot be CA or CA firm who has issued form 3.
Certificates to verify	Form -1 by Project Architect, Form -2 by Project Engineer & Disclosure of Sold & booked inventory - Circular – 29 & corrigendum	Form -1, Form -2 & Form-3 by CA and Disclosure of Sold & booked inventory - Circular – 29 & corrigendum

Note	Form-5
1	Form - 5 to be on the letter head of Chartered Accountant.
2	<p>a) Name of the promoter in whose name the project is registered and the registered address of the promoter, as mentioned in the MahaRERA website.</p> <p>b) The auditor should verify the same from the MahaRERA website and retain a copy of the same duly certified by the promoter.</p> <p>c) The promoter may change the promoter name and the address by making the change application to MahaRERA, in such a case, necessary documents to be obtained and verified by the auditor.</p>
3	Name of the promoter has to be mentioned as per MahaRERA website.
4	<p>a) Period of the report starts , in the first year ,from the date of registration of the project and In the subsequent year, it will be 1st April of the financial year.</p> <p>b) With respect to the ongoing project, in the first year, the date will start from the date of obtaining the Commencement certificate.</p> <p>c) The end period will be 31st March of that financial year or the date of issuance of Form – 4 by the Project Architect whichever is earlier.</p> <p>d) Since the certificate has to be issued project wise, the name of the project has to be properly mentioned. The Auditor should mention the name of the project in as reflecting in MahaRera Registration Certificate.</p> <p>e) Many times, the promoter registers the project phase wise, each project name is differentiated by wing number; Say A wing or B Wing.</p> <p>f) Auditor has to obtain the registration certificate duly authenticated by the promoter.</p>

Note**Form-5**

4 Illustration 1:

Sr.No	Particulars	Dates
1	Project registered on	10 th October, 2017
2	Certified to be completed by Architect in form 4	28 th February, 2021
3	Period of Audit for entire project	10 th Oct, 2017 to 28 th February, 2021
4	The Audit period for the financial year 2020-21	1 st April, 2020 To 28 th February, 2021

Note**Form-5**

4 Illustration 2:

Sr.No	Particulars	Dates
1	Project registered on	10 th October, 2017
2	Certified to be completed by Architect in form 4	30 th April, 2021
3	Period of Audit for entire project	10 th Oct, 2017 to 30 th April, 2021
4	The Audit period for the financial year 2020-21	1 st April, 2020 To 31 st March, 2021
5	The Audit period for the financial year 2021-22	1 st April, 2021 To 30 th April, 2021

Note**Form-5**

- 5
- a) This certificate is issued in accordance with provisions of the RERA “Rules”, “Regulations”, “Circulars”, “Orders” etc governing the RERA Designated Account, deposit, withdrawal and its utilization.
 - b) In addition to normal auditing skill and knowledge, the auditor should get acquainted with the relevant “Rules”, “Regulations”, “Circulars”, “Orders” etc issued by MahaRERA regarding the regulation of RERA designated account and then ensure that the promoter has scrupulously complied them.
- 6
- a) The auditor has to prepare a checklist of the information required and obtain that information from the promoter before starting the audit. (Annex-1)
 - b) The copy of the Bank Statement of RERA designated Account for the audit period.
 - c) The copy of the Bank statement of other accounts maintained by the Promoter.
 - d) Deposits and withdrawals done in those accounts.
 - e) System adopted to deposit and withdraw from the RERA Designated Account (like 3 accounts system (a) 100% for collection (b) 70% transferred to RERA Designated Account (c) 30% transferred to promoter regular operation Account.
 - f) After going through the information provided by the promoter, the auditor may by sending an email demand necessary explanation & clarifications in case of doubts. These should be maintained as the Audit working papers.

Note**Form-5**

- 7 Period ended date will normally be till the end of the financial year. However, in the year in which the Project receives OC/CC then the date of issuance of Form – 4 by the Project Architect will be the period ended date.
- 8 a) The auditor determines the percentage of the completion by using the following formula:
❖ Estimated Project Cost (EPC) = Estimated Land cost(ELC) + Estimated Construction cost(ECC)
❖ Incurred Project cost (IPC) = Incurred Land Cost(ILC)+Incurred Construction Cost(ICC)
❖ Percentage of Completion= $IPC/EPC \times 100$
- b) The located at means, the place of the project, as mentioned in RERA certificate, need to mentioned and not the address of the promoter office.

Note**Form-5**

9 Please Note: 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”

Illustration 1: If the Project is registered on 10th October 2017 & Certified to be completed by Architect in “Form – 4” on 28th February 2021 then for the FY 2020-21:
Amount collected “DURING THE YEAR” for the Project will be 70% of the Total Amount Collected from the Allottees from 1st April 2020 To 28th February 2021.

Illustration 2: If the Project is registered on 10th October 2017 & Certified to be completed by Architect in “Form – 4” on 30th April 2021 then for the FY 2020-21:
Amount collected “DURING THE YEAR” for the Project will be 70% of the Total Amount Collected from the Allottees from 1st April 2020 To 31st March 2021.

10

- a) This is the certificate to confirm the figures and not the opinion to be expressed on financial documents.
- b) CA to issue this certificate after satisfying himself with the accuracy of the figures mentioned in the certificate and after carrying out detailed audit.
- c) CA has to confirm that, the amount collected against the project has been utilized for the project only i.e towards land cost and construction cost.
- d) CA has to confirm that 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.

Note**Form-5**

- 14 a) CA while certifying finds any deviation from the provisions of the Act, Rules, Regulations, Circulars or Orders, the same need to be listed here.

The examples could be,

❖ the amount realized from the allottees is deposited in another account. In that case, what is the amount deposited in another account.

❖ If the amount has been drawn in excess of what has been permitted under CA certificate (Form-3), how much money has been overdrawn.

❖ Funds have been diverted to other projects or for other purposes, need to be reported.

❖ Architect (Form-1) or Engineer (Form-2) certificate is not obtained or if there are any differences.

❖ 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.

**Books ,Registers &
Documents
to be Verified
by CA**

- Accounting records – Audited and Audited Financial Statements.
- If the Financial statements are not audited under any other laws, then self attested books of accounts and self attested financial statements.
- Copy of application filed for registration of project under RERA
- Details of calculations considered to arrive at estimated cost of project.
- All project related documents like land documents, sanctions, clearances, NOC's
- Amount incurred towards acquisition of land or TDR etc
- All government fees, challans for all clearances and sanctions etc.
- All bank statements of RERA Designated Bank Accounts and other bank accounts related to the project.

**Books ,Registers &
Documents
to be Verified
by CA**

- **Statement of Allottee(s) along with amount received along with supporting**
 - Application form / Booking form
 - Allotment letters issued
 - Invoices / Demand letters issued
 - Receipts issued to the customers
 - Credit Notes issued
 - List of agreement of sales entered, advances received, balance receivables etc
- Amount received as loans along with loan confirmation from the lenders
- List of customers who cancelled the booking / Agreement to Sale alongwith the amount returned / returnable or transferred to any other projects
- Money realized from allottees, 70 % deposit made to RERA designated bank account or in any other bank accounts.

**Books ,Registers &
Documents
to be Verified
by CA**

- 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 project and reasons there on
- Certificates from Project Architect (form 1) , Project Engineer (form 2) and CA for withdrawal (form 3) of money from the RERA designated Bank Account based on percentage of completion of the project.
- Project Loan or other loan statements
- Interest calculation / attribution towards the RERA project.
- Indirect taxes / GST paid from time to time – reconciliation / assurance

**Books ,Registers &
Documents
to be Verified
by CA**

- **TDS made by buyers @ 1 % – reconciliation / assurance as per 26AS.**
- **Any other relevant documents related to the 70% of the amount realized from the allottees, their withdrawal and utilization thereof.**
- **Copy of company Audit report/ Income Tax Audit report and Audited Financial statements.**
- **List of brokers who are working for the project and payments made**
- **The Consolidated statements of amount appropriated to various project during the financial year and other office and marketing expenses not appropriated to any of the projects.**

Qualifications & Comments

- This certificate in form 5 shall be submitted to authorities online and thus becomes a public document.
- Any person or the allottee may obtain these forms by filing application under Right to information(RTI)
- The comments in this section are purely a matter of interpretation and not binding on any regulatory authorities. There can be no assurance that the regulatory authorities will not take a position contrary to the comments or views of chartered accountants who are issuing the form in 3 and 5. Therefore, it is always advisable for the Chartered Accountants to incorporate the remarks, comments and necessary qualifications at the end of the certificate under the heading, important notes, to disclose the stand or the views taken by the Chartered Accountant while issuing the form 3 or 5.

Challenges of Form - 5

- Sufficient Knowledge of Act and Rules – Both promoter and professionals
- Information filled during registration is erroneous – What stand will the Auditor take?
- Record/ Data/ Expenses are maintained RERA Project wise and accounts are maintained Promoter-wise.
- Allocation of common expenses with respect to RERA projects
 - Basis of allocation
 - Loan availed and interest apportionment to RERA project-wise
- Reconciliation at various stages of work / records / data.
- Clarity on the statute, as it's a new law.
- In case of single RERA registration – information from Landlord and compliance there on under RERA being a Promoter (Land Owner)

Tips to Professionals

- *Don't be biased on the information and report*
- *Don't be under the influence of Promoters*
- *Don't be casual on report / certification*
- *Collect sufficient documents / information and facts*
- *If you don't know, ask others*
- *If you are not sure – disclose it at the end of annual statement of account.*

THANK YOU

CA ABHINAV WELEKAR

FCA, B-COM, D-NISM

Senior Partner at APJ & Associates, Nagpur

awelekar@gmail.com

9373106305, 9405912443