

Kingdom of Bahrain مملكة البحرين

مؤسسة التنظيم العقاري
Real Estate Regulatory Authority



RERA Operating Guidelines

Escrow Accounts for Off-Plan Sale Real Estate
Development Projects



Contents

1	Legal Background to Escrow Account Requirements	3
2	When does a Real Estate Development require an Escrow Account	3
3	What is the Purpose of an Escrow Account	3
4	Escrow Agreement.....	4
5	Escrow Amount deposited in the Escrow Account	4
5.1	Valuation of Land for the purpose of Escrow Calculation	4
6	Financial Instruments.....	5
7	Escrow Account Requirement to apply for a Development License.....	5
8	Escrow Account Trustee.....	5
9	Escrow Account for Mixed Use Developments.....	5
10	Receiving payments from Buyers under Off-Plan Sale Contracts.....	6
11	Recording of payments by buyers for off-plan units	6
12	Receiving Loan or Mortgage Financing	7
13	Payments from Escrow Accounts.....	7
14	Approval Process for Payments	9
15	Repayment of Loans and Payment for Land	9
16	Payment of Development Profits.....	10
17	Transition guidelines for Projects starting before 1 March 2018	10
17.1	Projects licensed by Municipality One Stop Shop (OSS)	10
17.2	Projects not licensed by OSS prior to 1 March 2018	10
18	Questions and Guidance	11



1 Legal Background to Escrow Account Requirements

Law 27 of 2017 – Real Estate Sector Regulation (“the Law”) requires the Developer of an Off-Plan Sale Project to open an Escrow Account for each Off-Plan Sale Project. There are 2 Resolutions implementing the law on Escrow Accounts;

- I. Central Bank of Bahrain Resolution No 19 of 2018 Regulating the activities of Escrow Agents licensed by the CBB.
- II. RERA Resolution No 3 of 2018 “Escrow Account of Off-Plan Sale Projects” is the implementing resolution setting out the rules for operating Escrow Accounts.

These Operating Guidelines “Guidelines” provide official guidance to Developers of Off-Plan Sale Developments on how Escrow Accounts should be operated to comply with the Law and RERA Policy.

Escrow Agent Banks are licensed and regulated by CBB and Article 5 of CBB Decision 19 of 2018 requires Escrow Agent Banks to follow these Guidelines where appropriate.

The RERA Resolution and Guidelines are RERA policy set by the Board of Directors of RERA. These will be updated the Board to reflect changes in policy from time to time. The latest version of the Guidelines will be available on the RERA website.

2 When does a Real Estate Development require an Escrow Account

The Law requires every Off-Plan Sale Development Project to be licensed by RERA and to have an Escrow Account dedicated to the Project.

Where a Development is implemented in different phases or where a Development consists of 2 or more buildings with different buyers, a Developer may choose to open a separate Escrow Account for each phase of the Development or each building.

3 What is the Purpose of an Escrow Account

The main purpose of the Escrow Account is to ringfence all receipts and payments relating to an Off-Plan Development. This ringfencing reduces the potential of non-completion of the project by ensuring that all Development Project Finances are paid directly into the Escrow Account. Only valid expenses of the Development Project can be paid from the Escrow Account.

In addition, the Developer or Promoter of the Development is required to deposit a Minimum Escrow Amount in the Escrow Account. This minimum deposit is set at 20% of the Development Value.



4 Escrow Agreement

Every Escrow Account must be governed by an Escrow Agreement to be signed between the Developer and the Escrow Agent. The Escrow Agreement will govern the agreement between the Developer and the Escrow Agent for managing the Escrow Account and must be consistent with the legal framework for Escrow Accounts for Off-Plan Sale Projects.

The Escrow Agreement for each Escrow Account is required to be lodged with RERA.

5 Escrow Amount deposited in the Escrow Account

Every Off-Plan Sale Development is required to have a Minimum Escrow Amount deposited by the Developer in the Escrow Account. The Escrow Amount ensures that the Developer invests a minimum of 20% in the Development.

The Escrow Amount must be paid into the Escrow Account before RERA issues an Off-Plan Development license.

The Escrow Amount is calculated as follows;

Development Value (Land Value + Construction Value) * 20%

The Escrow Amount can be paid into the Escrow Account in Phases in line with the completion of the Construction of the Building Phase.

Construction Phase	% of 20% Escrow Amount	Total of Development Value
0%	1 / 5th	4%
20%	1 / 5th	8%
40%	1 / 5th	12%
60%	1 / 5th	16%
80%	1 / 5th	20%

Note the first Escrow deposit is required prior to issue of the Development License.

5.1 Valuation of Land for the purpose of Escrow Calculation

Land Value is calculated as the Open Market Value of the full plot of Land included in the Development being licensed. If the Development Project is a sub-development of a larger master plan, the land value is only related to the sub-development.

Open Market Value means the value that would be paid between a non-related buyer and seller for the parcel of land in the Development Project. The valuation must be based on the current value of the Land, in the condition that it was acquired by the Developer. It could be un-serviced, where there is no infrastructure on site; or Serviced where there are utilities and roads infrastructure to the site.

If the land was acquired by the Developer at Open Market Value within the 2 years prior to the application, the value of the land should be the value paid by the



Developer. If it was acquired more than 2 years ago a Valuation will be required by a qualified valuer.

If the Land was transferred into the Development company in a non-arms length transaction then a Valuation will be required.

6 Financial Instruments

RERA will in the future issue guidelines on the use of Insurance Bonds or Bank Guarantees to take the place of the deposit of 20% Escrow Amount in the Escrow Account.

7 Escrow Account Requirement to apply for a Development License

An Escrow Account must be opened before applying to RERA for a Development License.

The Application for a Development License must include the following;

- A letter from the Escrow Agent detailing;
 - Name of the Escrow Agent
 - Bank Account Name and Number
 - Bank Account Payment instructions to be provided to Buyers.
 - Value of the Escrow Deposit by the Developer
- A copy of the Escrow Agreement
- The proposed phasing of the payment of 20% into the Escrow Account

8 Escrow Account Trustee

Escrow Account Trustees (Trustees) are Commercial Banks Licensed by the Central Bank of Bahrain and registered with RERA as Escrow Account Trustees.

RERA maintains a Register of Escrow Account Trustees.

9 Escrow Account for Mixed Use Developments

Where a Development is a combination of Off-Plan Sale and other commercial development an Escrow Account must be opened for the Off-Plan share of the Development.

It will not be allowed to pay for Development Costs of the commercial aspect of the Development from the Development Escrow Account.

With the License application, the Developer must present the Development Finance Plan showing a split of the costs of the Development into the Off-Plan and Non-Off Plan portions of the Development.



10 Receiving payments from Buyers under Off-Plan Sale Contracts

All Payments from Buyers whether Deposits or Contractual Stage Payments must be paid directly by the Buyer into the Escrow Account.

All contract and Payment Request documentation should contain the payment instructions for the Project's Escrow Account.

Any Real Estate Brokers selling Off-Plan Developments on behalf of the Developer cannot pay Buyers funds into the Brokers Bank Account.

RERA Resolution No 2. Requires all Buyer Payments to be linked to the construction schedule.

Payment	Construction Stage	Payment by Buyer
Deposit	Contract Signing	Up to 10%
Stage payment 1	Construction Stage 20%	20% of Sale Price less Deposit
Stage Payment 2	Construction Stage 40%	Up to 40% of Sale Price
Stage Payment 3	Construction Stage 60%	Up to 60% of Sale Price
Stage Payment 4	Construction Stage 80%	Up to 80% of Sale Price
Stage Payment 5	Completion	Up to 100% of Sale Price less any agreed retention

After completion of the Construction Stages specified above, the Developer is required to submit to RERA a certificate of the % stage of completion prepared and signed by the Consultant to the Development. RERA will then issue an authorisation to call for the next Buyer stage payment matching the stage of construction completion.

11 Recording of payments by buyers for off-plan units

- a. Escrow Agents are required to maintain records of the individual buyer payments received for each unit.
- b. The Escrow Agent is required to provide statements to each buyer of the payments received for their unit at a minimum of every six (6) months. Statements can be in electronic or paper format.
- c. At any point in time buyers of each unit are entitled to request statements of all the payments that have been paid to the Escrow Agent in relation to the unit.
- d. Where an Off-Plan Sale unit is mortgaged to a Bank. The Bank may make the payments to the Escrow Agent in relation to that unit. Both the Buyer and Bank are entitled to request statements of the payments in relation to that unit.



12 Receiving Loan or Mortgage Financing

At the time of applying for a license, Developers should own the title to the Land in the Development Project free of any mortgages.

Where a Development or land is mortgaged to provide finance to undertake the construction of the Development, the loan proceeds from banks or financiers of the Development Project must be paid directly by the bank into the Escrow Account.

13 Payments from Escrow Accounts

The Finance Plan submitted with the Development License application should detail the valid Construction Costs and Development Expenses related to the Development Project that the Developer intends to pay from the Escrow Account.

Where there are expected costs that are outside of the normal Development Costs listed below, the Developer should highlight these costs in the Development License application for specific approval by RERA.

Allowable Development Costs

- a. Construction or Contractor costs;
 - I. Main contractor or other contractor payment schedule that relate directly to the project. Payments should be made to contractors in accordance with the construction contract.
 - II. Where there are multiple contractors working on one project, the costs of each contractor will be valid to be paid from the Escrow Account.
 - III. Valid material costs incurred directly by the Developer rather than through the main contractor contract.
 - IV. Valid labour costs on contract fees incurred directly by the Developer rather than through the main contractor contract.
 - V. Infrastructure costs of the Development Project such as roads, utilities, and services where the costs are paid directly to a third party contractor or utility company.
 - VI. Infrastructure costs incurred after the licensing of the Development and directly relating to the development such as roads, utilities, and services paid by the Developer.
 - VII. Share of infrastructure costs directly relating to the development such as roads, utilities, and services where the costs are paid to a Master Developer will be allowable, provided the costs were included within the Financing Plan and were incurred after the date of the start of the Licensing of the Development Project. The Master Developer must provide costings for the infrastructure costs being reinvoiced.
 - VIII. Connection fees paid to utility companies.



- b. Valid Development Expenses include cost related to the Development such as consultant project management fees, engineering fees, inspection and certification fees, escrow account fees and marketing and administration costs and other expenses validly relating to the Development Project.
- c. Marketing and Administration Costs up to 10% of the Construction Value of the Project. In exceptional circumstances and at the discretion of RERA on a case by case basis; the Marketing and Administration Costs limit can be increased to 15% of the Construction Value.

The following specific costs are allowable and must be included within the 10% Marketing and Administration costs;

- I. Broker Fees and commissions for sale of off-plan units.
- II. Master Plan Marketing costs may be recharged by a Master Developer and will form part of the Marketing Costs of the Development.
- III. Advertising and marketing costs, including advertising, exhibitions, launch events and other valid costs of marketing.
- IV. Entertainment costs are not permitted except as part of a Development launch event.
- V. Escrow Account Fees shall be a valid administrative cost of the project and can be paid from the Escrow Account.
- VI. Any Developer project management invoices to the Project shall form part of the 10% Marketing and Administration Cost.

Shared Development Costs

- d. Where there are valid construction costs of the Development that are shared between 2 or more licensed Developments within the same Master Development, the Developer may split those costs between the Projects in proportion to each Project's share of the costs.

Each share of the total cost shall be a valid cost payable for the Escrow Account for that Project, provided that no more than 100% of the total cost can be paid out of the Projects.

Where the costs are paid by a Master Developer and recharged to a Sub-Development Project, no mark-up or profit can be charged by the Master Developer.

- e. Where a Developer and a Contractor are related parties, the Consulting Firm approving the costs must determine that the costs charged are at market rates before recommending payment. If costs presented for payment are above market



rates for the work undertaken the payment from the Escrow Account shall be restricted to the market value for the work undertaken.

- f. Where there is a mixed use Development e.g. Off-Plan Residential and Retail or Hotel. Only costs relating to the Off-Plan Development can be paid from the Escrow Account. The Developer will need to agree with RERA at the time of licensing a valid split of the costs for the Development between the Off-Plan Sale Project and the other development.

With agreement of RERA, the Developer may choose to pay to the Escrow Account the value of the non-qualifying costs and then make the total value of the shared qualifying and non-qualifying costs from the Escrow Account.

Note: Any Developer contributions for non-qualifying costs must be paid in advance of making the Supplier payments. A Developer is not permitted to refund the Escrow Account after the payment of the supplier costs.

14 Approval Process for Payments

- a. All supplier payments should be made directly from the Escrow Account to the supplier.
- b. All payment instructions should include;
 - i. Signed instruction by Developer and Consulting Engineer
 - ii. Copies of invoices to be paid
 - iii. Supporting contractual documents identifying the payment that is being instructed.
 - iv. Copy of the Consultant Engineer statement of stage of completion of construction. (Where relevant to the payment)
 - v. Confirmation from Consultant Engineer that contracted service has been delivered. (Where relevant to the payment)

15 Repayment of Loans and Payment for Land

A Developer cannot use the funds within the Escrow Account to pay for the land of the Real Estate Development Project.

A Developer cannot repay loan or mortgage finance for the Project from the Escrow Account, unless the Loan Proceeds were paid into the Escrow account at the start of the loan; and either

- a. 100% of the Construction Schedule is complete or



- b. The Developer can demonstrate to RERA that sufficient funds account to meet all future construction costs and maintain the 5% defect retention after the loan repayment.

Approval of the Authority is required to repay loan or mortgage finance from the Escrow Account.

16 Payment of Development Profits

With the approval of the Authority, the Developer may withdraw up to 50% of the profit on the Real Estate Development Project from the Escrow Account, provided that after the withdrawal of the profits each of the following are achieved:

- a. The Real Estate Development Project is at least 60% complete; and
- b. The Escrow Account has sufficient funds after the withdrawal of the profits to meet;
 - i. the remaining Construction Costs; and
 - ii. the Escrow Amount, to include the 5% Retention for Defects in Article 9.

17 Transition guidelines for Projects starting before 1 March 2018

17.1 Projects licensed by Municipality One Stop Shop (OSS)

All Projects licensed by the OSS before 1 March 2018 shall continue with their existing Escrow Account arrangements already approved.

17.2 Projects not licensed by OSS prior to 1 March 2018

Any Development Project commencing before 1 March 2018 and not licensed by OSS shall be required to open an Escrow Account. An Escrow Account is required to get an Advertising License to sell Off-Plan units.

The Escrow Account should have the following amounts transferred into the Escrow Account prior to receiving the license;

- a. The Escrow Amount matching the stage of completion of the Development Project shall be lodged into the Escrow Account.
- b. The total amount of all Buyer payments received in relation to off-plan sale units; Less the total amount of construction costs and development expenses incurred to date.
- c. Alternately, if the Development Project is greater than 50% complete, the Developer can transfer the required amount to complete the Construction plus the 5% defect retention.
- d. All amounts must be certified by a Consulting Firm and supported by the Financial Plan.



18 Questions and Guidance

- Any queries in relation to operation of Escrow Accounts should be emailed to;
escrow@rera.gov.bh
- Alternately Contact RERA Escrow Unit at + 973 1756 6777