

Official Gazette

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The English translations of the RERA legislation contained herein are currently in draft form and are provided for reference only.

The Real Estate Regulatory Authority

Resolution No. (3) of 2018 Regarding Escrow Accounts of Off-Plan Sale Projects

Chairman of the Board of Directors of the Real Estate Regulatory Authority:

Having perused Law No. (27) of 2017 With Respect to Promulgating the Real Estate Sector

Regulation Law and the Decree No. 69 of 2017 with respect to the organization of the Real

Estate Regulatory Authority ("RERA");

Resolution No. (5) of 2018 on determining the fees of services, applications and licenses issued

according to the Real Estate Sector Regulation Law; and

According to the proposal put forward by the Chief Executive Officer of the Real Estate

Regulatory Authority and after the approval of the Real Estate Regulatory Authority's Board of

Directors;

Resolved:

Article (1)

Definitions

In application of the provision of this Resolution, the terms and expressions contained herein shall have the same meanings ascribed thereto in the Law No. (27) of 2017 With Respect to Promulgating the Real Estate Sector Regulation Law and the following terms and expressions shall have the meanings assigned to each of them unless the context otherwise requires:

Law: Law No. (27) of 2017 With Respect to Promulgating the Real Estate Sector Regulation Law.

Real Estate Development Project or the Project: The Off-Plan sale project licensed in accordance with the provisions of the law.

Bank: Central Bank of Bahrain.

Construction Value: The cost of all construction, management and execution works of the project as specified in the project construction contracts approved by the consultant engineer.

Land Value: It is the value of the land that forms part of the project as determined by the Valuer.

Estimated Value of the Project: The total of the land value and the construction value.

Escrow of Off-Plan Sale: Cash deposits in the Escrow Account or any financial instrument of the financial instruments specified in Article No. (5) of this resolution, which aims to protect payments made by purchasers.

Escrow Value: Cash amounts or financial instrument equal to a certain percentage of the estimated value of the project.

Purchaser: A natural or legal person who purchased or owned any real estate right on an off-plan real estate unit.

Staged Payments: The amount of down payment or cash payments paid by the purchaser in the escrow account of the real estate development project in accordance with the contract concluded with the developer.

Consultant Engineer: A Consultant Engineer licensed by the Council for Regulating the Practice of Engineering Professions (CRPEP).

Financier: Banks, companies or establishments licensed to conduct financing activities, which finance real estate development projects.

Article (2)

The Scope of the Resolution's Validity

The provisions of this Resolution shall apply to off-plan sale real estate development projects.

Article (3)

Opening the Escrow Account

An independent Escrow Account shall be created in the name of each real estate development project by a written agreement between the Developer and the Escrow Account Manager, in which the escrow value shall be deposited. This amount shall be calculated based on the execution stage of the project and the loan amount if the developer mortgages the project to obtain a loan from the financier as well as all the amounts provided by the developer and depositors.

Article (4)

Multiple Escrow Accounts

With exception to the provisions of Article No. (3) of this Resolution, the developer may open more than one escrow account for the real estate development project if the project is executed over multiple stages in which each stage will have an independent Escrow Account created by a separate agreement between the Developer and the Escrow Account Manager.

Article (5)

Escrow of Off-Plan Sale

- a) The escrow value shall be equal to 20% of the estimated value of the project.
- b) The developer shall deposit the escrow value via one of the following methods:
 - 1) Cash deposit in the escrow account, and the payment shall be in one installment or numerous installments according to the stages of the project execution.
 - 2) A bank guarantee from a bank approved by the Central Bank covering the full escrow value.
 - 3) Insurance policy covering the full escrow value to be issued by one of the licensed insurance companies in the Kingdom.
 - 4) Any other financial instrument by any financial institution licensed by the Central Bank provided that RERA approves such instrument.

The financial instruments mentioned in items No. (2), (3) and (4) of paragraph (b) of this Article are required to be issued in the name of RERA and for the benefit of the purchasers of the project, and the validity shall continue until the completion of the project and the issuance of the completion certificate.

Article (6)

Approving the Escrow Account Manager

- a) The Escrow Account Manager shall be approved by RERA under a request submitted in accordance with the approved form at it, provided that the request shall be accompanied by the following documents:
 - 1) The signature form of the authorized individuals with the escrow account manager by giving instructions regarding transactions related to the escrow account.
 - 2) Any other documents or information required by RERA.
- b) RERA shall issue the approval certificate of the escrow account manager in which the name and address of the escrow account manager and the date of approval shall be included. The escrow account manager shall not be registered in the escrow account managers' register except after the certificate is obtained.

Article (7)

Cancellation of the Escrow Account Manager's Approval

RERA may cancel the approval of the escrow account manager if the manager is found to be in breach of the provisions of the law or the resolutions issued in the implementation thereof, if the violation is not suspended and its causes or effects are removed immediately or within a period of time determined by RERA, starting from the date of notifying the escrow account manager of the violation.

Article (8)

Escrow Account Managers' Register

- a) A register called (the Register of Escrow Account Managers for off-plan sale projects) and shall be a paper or electronic register in which the following data shall be recorded:
 - 1) The name of the Escrow Account Trustee.
 - 2) Address
 - 3) Contact official and numbers.
 - 4) E-mail.
 - 5) Any other data that the Real Estate Regulatory Agency deems fit.
- b) RERA shall make available the information recorded in the Escrow Account Managers' Register to the public, for reviewing thereof by the publication of the register on RERA's website or by sending a copy at the request submitted to RERA.

Article (9)

Stalled or Suspended Projects

The escrow account manager shall stop paying any of the deposited amounts in the escrow account if he is notified by RERA that the developer is temporarily or permanently stalled or suspended from completing the execution of the real estate development project for any reason.

Article (10)

Ensuring Good Defects' Repair

- a) The escrow account manager shall retain 5% of the construction value of the project after the developer obtains the completion certificate to ensure the good repair defects that may appear after the completion of the project. This percentage shall not be disbursed to the developer except after the expiry of a period of twelve months from the handover date of the last real estate unit to the purchasers, and all of that shall be conducted after obtaining RERA's approval.
- b) The provisions of paragraph (a) of this Article shall apply on existing projects prior to the issuance of this resolution, in which all real estate units have not been delivered, and prior to issuing the title deeds to beneficiaries.

Article (11)

Depositing in the Escrow Account

- a) The developer shall deposit all the amounts related to the construction and execution of the project directly in the project's escrow account.
- b) The financiers of the project shall deposit all of the finance amounts directly in the escrow account of the project.
- c) The purchasers shall deposit all of the payments for the real estate units directly in the escrow account of the project.
- d) The licensed real estate broker shall deposit all the payments of the purchasers directly in the escrow account of the project.

Article (12)

Payments from the Escrow Account

- a) The funds deposited in the escrow account shall be allocated exclusively for the purposes of constructing, executing and managing the project, and in particular for the following:
 - 1) Infrastructure costs such as utilities, roads, sewage system, water supply and others.
 - 2) The Consultant Engineer's fees, marketing, sales and other expenses related to the project.

- b) The value of the land of the project may not be paid from the funds deposited in the escrow account.
- c) The developer may, in the case of expenses related to the cost of infrastructure of more than one real estate development project relating to one main project, distribute the expenses among the projects and pay the costs from various escrow accounts, after obtaining the approval of RERA.
- d) The escrow account manager is entitled to pay the amounts due to the contractor or service providers for the construction and execution of the project directly to them from the escrow account, provided that the escrow account manager receives the payment order approved by the developer and the consultant engineer appointed in the project.

Article (13)

Administrative and Marketing Expenses

- a) The escrow account manager may not pay from the escrow account more than 10% of the construction value of the project for the project's administrative and marketing expenses.
- b) RERA may, in certain circumstances, at its discretion and at the request of the developer, increase the administrative and marketing expenses to a maximum of 15% of the construction value of the project.
- c) In applying the provisions of this Article, the commission due to the brokers shall be deemed as part of the marketing expenses of the project and shall be paid from the escrow account provided that the following is achieved:
 - 1) The broker must be licensed by RERA.
 - 2) The purchaser must deposit a minimum of 10% of the price of the sold real estate unit in the escrow account.
 - 3) The real estate unit must be registered in the name of the purchaser in the Off-Plan Sales Register.

Article (14)

Repayment of Loans and Financing Mortgages

The developer may, after obtaining the approval of RERA, pay the loans or financing mortgages of the project from the escrow account of the project, provided that the developer proves that the funds are in excess of the amounts allocated for the execution of the entire project construction works and the value of the bond for defects repair.

Article (15)

Paying an Amount from the Profits

The developer may, after obtaining the approval of RERA, pay no more than 50% of the profits from the escrow account of the project, provided that the following is achieved:

- 1) Achieving project completion rate of no less than 60% of the project.
- 2) The cash amounts in the escrow account are in excess of the amounts determined for the cost of the remaining construction works in the project and the value of the bond for defects repair.

Article (16)

Obtaining Interests for the Amounts of the Escrow Account

The escrow account manager may pay the developer bank interests or profits for the funds deposited in the escrow account, provided that the amounts deposited in the account are not restricted and that the payment of the receivables is not delayed to cover the costs of executing the real estate development project.

Article (17)

Inspection of Completion Stages

The Consultant Engineer appointed for the project shall inspect the completion stages achieved in the project to determine the progress payments due through the completion status certificate which he must provide to RERA and the Escrow Account Manager after his verification, which must state the percentage of the project's completion compared to the overall execution works of the project.

Article (18)

Auditing the Escrow Accounts

- a) The developer shall provide RERA with an annual financial report for the project prepared by an Auditor registered in the Register of Auditors, showing all revenues and expenses in the template approved by RERA.
- b) The Developer and Escrow Account Manager shall provide RERA with any financial reports relating to the project, which RERA may require at any time.

Article (19)

Viewing the Escrow Account Data

- a) The purchasers have the right to view their escrow account data and obtain statements from the Escrow Account Manager.

- b) The Escrow Account Manager shall provide the developer and RERA with monthly data and statements on all matters relating to the Escrow Account.

Article (20)

Rectification of Status

- a) The developer, who received money from depositors, prior to the validity of this resolution, shall submit to RERA a financial statement prepared by an auditor registered in the Register of Auditors in which all the funds received from the purchasers and the amounts spent on the project shall be recorded and the developer shall also open an escrow account for the project and deposit the remaining amounts or the escrow value (Whichever is higher) in the account within a period not exceeding six months from the date the law came into force.
- b) The developer who is licensed for a real estate development project shall rectify his status in accordance with the provisions of this resolution within a period not exceeding six months from the date the law came into force.

Article (21)

This Resolution shall be executed by the Chief Executive Officer of RERA and shall be effective as of the day following the date of publication in the Official Gazette.

Chairman of the Real Estate Regulatory Authority
Salman bin Abdallah bin Hamad Al Khalifa

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