



# **REAL ESTATE REGULATORY ADMINISTRATION**

## **GUIDELINES**

**Based on the Amiri Decree No. 22 of 2008 & No. 10 of 2014**

**RERA-RAK**

# **GUIDELINES**

Guidelines for Amiri Decree No. 22 of 2008 & No. 10 of 2014 regarding RERA-  
RAK

## **INTRODUCTION**

These guidelines are issued to implement Amiri Decree No. 22 of 2008 and No. 10 of 2014 Concerning Guarantee Accounts of Real Estate Development in the Emirate of Ras Al Khaimah , United Arab Emirates , supervised by Municipality of Ras Al Khaimah .

## **REAL ESTATE REGULATORY ADMINISTRATION**

Pursuant to the Amiri Decrees a Real Estate Regulatory Administration has been established for the purpose of carrying out the provisions of these Implementing Guidelines in accordance with Amiri Decree No. 22 of 2008 and No. 10 of 2014 .

### **DEFINITIONS:**

<b><u>RERA-RAK</u></b>	Real Estate Regulatory Authority in Ras Al Khaimah
<b><u>Guarantee Account</u></b>	Also Known as a Trust or Escrow Account is a bank account designated for real estate project in which will be deposited the amounts paid by buyers of units off the plan or the project financing parties .
<b><u>Developer</u></b>	A natural or legal person licensed to carry on the activity of buying or selling properties for developing and that includes the Master Developer and Sub-Developer.
<b><u>End-User</u></b>	A third party buyer who may be a natural or legal person who buys one or more Unit/s from a Developer .
<b><u>Account Trustee</u></b>	Also Known as a Trust Agent , is a bank or financial institution certified by the RERA-RAK for the management of the Guarantee Account.
<b><u>Financial Statement</u></b>	Also called the Project Revenue Statement that shows project details including cash flows and outflows .
<b><u>Conceptual designs</u></b>	Consists of basic architectural plans and elevations , sections , parking and utility provisions and other details as appropriate .
<b><u>Assigned Engineer</u></b>	A technical inspector appointed by Account Trustee and /or RERA-RAK to certify the percentage (%) of completion of the project .

**Implementing guidelines** Refer to this regulation and includes such  
**(For Amiri Decree No. 22 of 2008 and No. 10 of 2014)** amendments, modifications, revisions or clarifications as may be issued by RAK municipality and/or the RERA-RAK from time to time.

### **BASIC CONCEPT**

- Money received from End-User and financing parties received by the registered developer or its representatives, for sell-off plan for registered projects, will be considered as Trust Money under Amiri Decree No. 22 of 2008 and No. 10 of 2014 and its implementing guidelines.
- Such monies received must be deposited in a Guarantee Account and shall be used exclusively for the particular real estate project for which the Guarantee Account was opened.
- There must be a separate Guarantee Account for each project or plot.
- Monies shall released from the Guarantee Account in accordance with these Implementing guidelines.
- A Developer shall not advertise in local or foreign media, or participate in local or foreign exhibitions to promote the sale of units or properties off the plan unless it has obtained a written permit from the RERA-RAK.
- It is the Account Trustee's responsibility to comply with central bank procedures concerning Ant-money – laundering (AML).

### **OPENING AND ACTIVATION OF GUARANTEE ACCOUNT**

- 1- All developers conducting the business of buying developing and selling real estate properties in the Emirate of Ras Al Khaimah under the supervisions of Municipality of Ras Al Khaimah must be duly licensed and register with the RERA-RAK . No such Developer may carry out or continue to carry out real estate development activities in Ras Al Khaimah unless it so registered upon payment of a Developer registration Fee and submissions of the following documents :
  - Duly filled up Application form ;
  - Trade license issued by relevant authority licensing authority or the regulatory Agency of Economic Development ;

- Membership Certificate from the Ras Al Khaimah Chamber of Commerce ; (if applicable)
  - Passport Copy of Partners with valid visa ;
  - Copy of Audited Financial Statements for the immediately preceding physical year.
  - Upon submission of the above –mentioned, RERA-RAK will evaluate the Developer seeking for registration and its cash flow shall be approved first by RERA-RAK prior to the registration.
- 2- In addition to the registration requirement under (a) above, a Developer who sells or will sell units off the plan must register the project and apply to the RERA-RAK to open a Guarantee Account with the Account Trustee duly certified by REAR-RAK under the name of the project and indicating its plot number The application should be accompanied by the following documents for approval by the RERA-RAK.
- Trade license as issued by RAK FTZ or the department of Economic Development ;
  - Membership Certificate for the Ras Al Khaimah Chamber of Commerce and Industry ; (if applicable)
  - Title Deed and/or Affection Plan of the plot duly authorized by the master Developer
  - Copy of the valid contract for the purchase of the plot executed by the Developer.
  - Conceptual Designs and layouts approved by RERA-RAK.
  - A Financial Statement authorized by a Certified Accountant showing the revenues and expenses (inflows and outflows) of the project, with a reasonable contingency plan that will be undertaken by the Developer in case excepted revenues (inflows) don not materialize. The financial Statement shall be subject to revision in accordance with periodic reviews to be made y RERA-RAK as necessary in the interest of the project.
  - An undertaking by the Sub-Developer to commence the project construction after obtaining the Master Developer in case a Sub-Developer does not exist.

- A sample of sale contract between the developer and a buyer.
- In case of renewal of registration, proof of Developer's registration with the RERA-RAK.

A developer who has sold , sells , or will sell units off the plan must register the project and apply to the RERA-RAK to open Guarantee Account for the Project.

All existing Guarantee Accounts whether or not obtained prior to the affectivity of the Amiri Decree or these implementing guidelines shall be adjusted to comply with provisions of the Decree as well as these implementing guidelines . the Developer shall take the necessary actions for such conformity and compliance .

On approval of the same and upon payment of the project registration fee, the RERA-RAK will give written approval for the Developer to open a Guarantee Account for project. The Guarantee Account shall be opened only with an Account Trustee registered with the RERA-RAK.

The Developer shall undergo this process for every project per plot.

- 3- The Account Trustee shall inform the RERA-RAK in writing of activation of the Guarantee Account not later than one (1) banking day from such activation
- 4- subject to periodic review of the Financial Statement, a Developer's registration with the RERA-RAK shall be valid for a period of one (1) year and may renewed subject to the payment of the prescribed Renewal Fee.
- 5- The registration of a project with the RERA-RAK shall be valid for period of (1) year and shall be renewed every year thereafter until one (1) year after the units in relevant project are registered in the names of the End-Usurers.

## TRUST ACCOUNT OPERATION

### 1. **Receiving Funds**

- 1.1 Create a special register in the RERA-RAK to tick the Sale contracts pursuant to Article 7 of the Amiri Decree No. 22 of 2008 in a fees set by the administration, (so that each unit sale in the RERA-RAK to be registered and the initial contract document to be issued document contracted and ratified by

the RERA-RAK in a fee to be determined by RERA-RAK , that the bank be notified by each Sale after the approved by the REAR-RAK)

1.2 Deposit Reference Number – The Escrow Account Agent shall give a deposit reference number for all and each installment before it deposited in the Escrow Account, Deposit Reference No. - shall be the Project Registration No. with the RERA-RAK, including the unit identification Numbers as mentioned in the Sales and Purchase Agreement between the Developer and the End-User.

### 3.1 Receiving Money from End-User

1.3.1 The beneficiary of money received from End-Users (e.g. cheque, transfer, etc) must be the Guarantee Account and the project name . In no case shall the Developer be beneficiary.

1.3.2 The following payment methods can be accepted by the Account Trustee, in connection with receiving and depositing Customers' (buyers of units off the plan or the project financing parties) installments into Guarantee Account:

- Cash or Cheque
- Electronic transfer
- Credit card payment
- Any other payment methods accepted by Trust Agent

1.3.3 A Developer may not collect more than 30% of a Unit's purchase price from an End User until and unless project construction has commenced as determined by the RERA-RAK.

1.4 The Trust Agent shall retain five percent (5%) of every deposit received at all times until the Guarantee Account Agreement is terminated in accordance with terms of the implementing guidelines.

1.4.1 Developers who made off plan sales before 03 July 2008 without previously opening a Guarantee Account must comply with the registration requirements provided in 4.a and 4.b above. Such Developer shall submit to RERA-RAK its latest and realistic Project Cost and Revenue Statement authenticated by a Certified Account for review and approval, RERA-RAK may require the Developer to open a Guarantee Account and issue such other instructions or directives in the interest of the relevant project.

1.4.2 50% of the retained money can be released to Developer at the date or receiving the completion certificate of the project, provided the Developer submits an unconditional and irrevocable Bank Guarantee for amount to be released, valid for one year from receiving the completion certificate. The Bank Guarantee shall be issued in favor of the Guarantee Account.

1.4.3 The other 50% of the retained money will be released to Developer after one year from the date that the units in the relevant project are registered in the name of the buyers, and after utilities have been connected to the unit.

#### 1.5 Receiving Money from Financing Parties

1.5.1 If the project was financed, the amount of financing shall be recorded under the name of Developer / Financial Institution and disclosed as collection.

1.5.2 If the End-User applies for any mortgage, the mortgage shall be recorded under the name of the Purchaser / Financial Institution and disclosed as collection, retaining 5% of the loan amount.

1.5.3 Funds must be deposited into the Guarantee Account dedicated exclusively to the project.

1.6 All reservation amounts (booking money) collected from End-Users shall be deposited in the Guarantee Account.



- 1.6.1 Refunds may be made by the Account Trustee in accordance with the contract between the Developer and the End-User upon approved by the RERA-RAK provided that there is sufficient balance available in the Guarantee Account and the RERA-RAK has given its written approval and the unit has been resold . If there is a dispute between the Developer and Buyer, the Bank shall refuse the disbursement of the refund amount until the matter is decided by a relevant court or other competent authority, or the Developer, the Buyer, and the RERA-RAK come to an agreement . It is the responsibility of the developer to ensure /arrange for the payment of the refund.
- 1.6.2 In cases of refund as provided above, the Account Trustee must ensure that the amounts to be refunded have been paid into the Trust Account.
- 1.7 In case of cancellation/Termination of the plot sale and purchase agreement signed between the Master Developer, or if the project is suspended or not viable as determined by the Master Developer :
- 1.7.1 RERA-RAK shall notify the Account Trustee in writing.
- 1.7.2 RERA-RAK shall issue the appropriate instructions concerning the project and the disposition of the Trust Account.

## 2. **Release of Funds**

Based on the Financial Statement, the following payments may be released from the Trust Account upon signature by RERA-RAK on the following order:

### 2.1 Cost of the Land

#### 2.1.1 Original Price paid in accordance with Plot Sale and Purchase Agreement (Plot SPA) or Title Deed.

- The Trust Agent shall make land payments from the Trust Account once it has confirmed the installation due date and installment amount as per the project cash flow approved by RERA-RAK.
- Payments for land installment must be made in the name/account of the Seller identified in the plot SPA. Within the same day, the Trust Agent shall inform

the Seller in writing each time such installment payment has been made from the Trust Account.

#### 2.1.2 Registration and Transfer Fees

- The Account Trustee can pay from the Trust Account the land registration /transfer and processing fees made out in manger's check payable directly to the relevant government authority.

#### 3.1.3 Construction Cost

A. The account Trustee must have the following documents prior to approval of construction related payments to construction related payments to contractors:

- ✓ - Affection plan
- ✓ - Building permits (indication of commencement date)
- ✓ - Contract agreement with consultant for site supervision
- ✓ - Contract agreement with subcontractor (e.g. enabling works, interior designer)
- ✓ - original copy of the Guarantees relevant to the Trust Account
- ✓ - Insurance policy assigned to Trust Account
- ✓ - Trade license for contractor, subcontractors , consultants and project manager
- ✓ - work program certified by consultant and developer with accompanying payments schedule

(B) For each incoming Progress Payment Certificate (PPC), RERA-RAK's Assigned Engineer shall conduct a site visit/s to evaluate the work done based on the Bill of Quantities. The signature of RERA-RAK's Assigned Engineer is required for every Progress Payment Certificate. The provisions of clause 6.2.3 (c) and (d) shall likewise apply. RERA-RAK may request the Account Trustee to undertake the task of the Assigned Engineer.

(C) Advanced payment to contractors :

- Advance payment can be made subject to the Trust Agent receiving and unconditional and irrevocable advance payment bank guarantee duly authenticated and assigned to the Trust Account. As part of this assignment the guarantee should mention that any claims under the guarantee will be paid directly into the project Guarantee Account. The Developer shall ensure that

the bank guarantee remains valid for as long as the advance payment made remains valid for as determined by the Trust Agent's Assigned Engineer or the RERA-RAK's engineer.

## 2.2 project management expenses up to 3% of paid construction const

- ❖ Project management costs include
  - ❖ Professional fees for consultants, architects and designers
  - ❖ Project management fees
  - ❖ Project office rent, project office utility charges
- ❖ Project management expenses shall be paid by the Trust Agent based on actual construction costs incurred by Developer once contractor's progress payments are approved by the Account Trustee.
- ❖ Trust Agent's Assigned Engineer's signature shall be required for:
  - ❖ Completion Certificate (% of completion) of the project
  - ❖ Certifying project management expenses
  - ❖ other order of payment

As between the Developer and the Trust Agent, the determination of the Trust Agent's Assigned Engineer is final

- ❖ The RERA-RAK may appoint an Assigned Engineer to verify the percentage of completion of the project as well as to double check the evaluation /report of the Assigned Engineer of the Trust Agent. As between the Trust Agent and the RERA-RAK , the determination of the RERA-RAK's Assigned Engineer is final.

Expenses for the RERA-RAK's Assigned Engineer shall be paid by the Trust Agent; the amount should be taken from Trust Account.

## 2.3 Promotion, Marketing, and Sales Expenses up to 5% deposited amounts

- ❖ Marketing expenses may include, but not be limited to the following
  - (a) Commission to agents and marketing specialist
  - (b) Cost of advertising, exhibitions and marketing
  - (c) Brokers commission
  - (d) Sales expenses
- ❖ For making related payments against particular unit(s), Trust Agent must have in its possession:

- (a) Copy of Reservation Form(s) / Sales and Purchase Agreement signed by the Unit Buyer and Developer.
- (b) Purchaser's passport copy.
- (c) - Supporting documents for the expenses

#### 2.4 loan settlement (if any)

- ❖ Developer can finance its project from any financial institution and subject to the following conditions:
  - (a) The amount of financing shall be recorded under the name of the Developer / Financial institution and disclosed as collection.
  - (b) Pledging must be registered as a second pledge over the plot.
  - (c) Loan installments can be disclosed in the cost categories of the Financial Statement of the project
- ❖ A Developer may not mortgage a development to obtain a loan from financing establishments or companies without the prior approval of the RERA-RAK and Master Developer and before obtaining the respective Title Deed.

#### 2.5 Trust Agent can release profit to Developer provided all the following conditions are met:

- After completing 80% of the project construction as certified by RERA-RAK
- After completing 100 of land payment
- Plot units are not subject to pledging
- Performance bond 10% of project value
- - RERA-RAK issues written approval

#### 2.6 Trust Agent fees may be deducted from the Guarantee Account

2.7 In case of insufficient funds, payments shall be made proportionately upon the approval of RERA-RAK. However, the amount of land installments due to the Seller shall at all times and in all cases be given preference in payments.

#### GUARANTEE ACCOUNT REPORTS

The following reports should be submitted by Account Trustees to RERA-RAK as specified or upon RERA-RAK's request:

1. Statement of Guarantee Account status – quarterly
2. Trail Balance of Guarantee Account – quarterly
3. Reconciliation report – quarterly
4. Collection report for the period (quarterly report) to show all amount received from each End-User, with the following details
  - project details (name, number, location)
  - project dates (opening date, period, report date)
  - collection date (unit reference no, buyer name, nationality, collected amount, etc)
5. payments report for the period
  - payment for land and for construction
  - payment due for marketing expenses equal to 5% of deposit amount
  - payment due for project management fees equal to 5% of certified construction done
  - other approved payment

#### GUARANTEE ACCOUNT AUDITING

1. External Auditing a qualified auditor under this act means who:
  - Registered as an auditor in the UAE or
  - Member of AAA (Accountants and Auditors in Association in UAE) or
  - Approved by RERA-RAK
2. Audit Process
  - The Account Trustee must submit the Trust Account report to RERA-RAK every three months or as requested.
  - External auditors must issue a professional audit report in accordance with Internal Standards on Auditing (ISA) and International Financial Reporting Standards (IFRS) if requested by RERA-RAK.
  - The Account Trustee and the Developer must keep all documents, records, relating to the trust account, available for inspection and auditing by the auditors and RERA-RAK.

#### PUBLICITY

1. All advertising and materials to promote the sale of units or properties off the plan must visibly show and make known the Developer Registration Number,

Project Registration Number and Guarantee Account details.

2. Advertisement and materials to promote the sale of units or properties off the plan must conform to the designs as approved by RERA-RAK. Any change in such approved designs must first be submitted for RERA-RAK's approval before it may be included in any advertisements or promotion materials.
3. Advertisement and materials to promote the sale of units or properties off the plan must be approved by RERA-RAK.
4. All Advertisement and materials to promote the sale of units or properties off the plan must be clearly shown with the Developer and the project registration number and Guarantee Account details.

### **CLOSING THE GUARANTEE ACCOUNT**

A Guarantee Account may be closed only after getting the approval of RERA-RAK.

### **CANCELLATION OF REGISTRATION**

A Developer's registration with RERA-RAK shall automatically be canceled in any of the following events pertaining to the Developer:

1. Declares bankruptcy;
2. Does not tender the project or make an award to a contractor within 6 months from the date Developer was granted approval to sell off plan without an acceptable excuse ;
3. License is cancelled by the licensing authorities; or
4. Violates numbers (2) , (3) ,(4) ,(5) or (6) of Article 15 of Amiri Decree No. 22 of 2008 and/or the corresponding provisions in the Implementing Guidelines.

### **PENALTIES**

Without prejudice to any penalties provided for in any other law, a penalty of incarceration and payment of a fine not less than 100,000 Dirhams, or either one of them, shall be imposed on:

1. Any person who carries on a property development business in the Emirate without a license.
2. Any person who submits false documents or makes misstatements to

concerned authorities in order to obtain a license for carrying on a property developments business.

3. Any person who knowingly offers to sell units in bogus property development.
4. Any person who embezzles, uses illegally or squanders payments delivered to him for the purposes of construction of property developments, and misappropriates such payments.
5. Any auditor who deliberately prepares a false report about the results of an audit he conducts on developer's financial position, or intentionally conceals significant facts from his report.
6. Any consultant who knowingly approves false documents about property development.

### **FEES**

RERA-RAK shall charge appropriate fees against the services offered in accordance with Amiri Decree No. 22 of 2008 and No. 10 of 2014 and its Implanting Guidelines

### **AMENDMENTS**

Amendments modifications, revisions, and clarifications of these regulations as well as instruction or directives relating hereto may be issued by the RERA-RAK from time to time.

## **GENERAL SUMMARY TO THE GUIDELINES**

### **ISSUED BY RERA-RAK**

#### **ESCROW – Definition**

It is a Trust account where a trustee (e.g.: BANK) accepts Funds by one party for the delivery to another party upon successful completion of specific conditions and or events.

#### **ESCROW ACCOUNT PURPOSE:**

- To ensure funds invested by buyers of properties are used only for those projects only.
- The escrow holders (Banks) responsibility is to safe guard and ensure that the funds are collected and disbursed as per policy and guidelines laid out by the government.

#### **RESPONSIBILITES OF ESCROW ACCOUNT PROVIDER (CBD)**

- Follow the guidelines as laid out by the RERA-RAK
- Executing all payment instructions as per guidelines.
- Responding to all requests from:
  - RERA-RAK
  - The developer
  - The investor
- Closing the Escrow only when project is complete and all terms of the escrow have been complied with
- provided an account closing statement.



**RERA-RAK Must first issue the following to the developer:**

- An approval certificate to show this development is now registered as an approved developer with RERA-RAK.
- A project approval certificate for the specific project showing he can now open the escrow account.
- To receive the above two certificate the developer must submit the following documents to the RERA-RAK
- Title Deed of the plot being developed or sale and purchase agreement form master developer if full payment not made.
- Approved Architectural design and layouts.
- Building permit issued by concerned authorities.
- A Trade license and Certificate of registration of membership in RAK Chamber of Commerce and Industry & RERA-RAK.
- A sample copy of a sale contract between the developer and the buyer.
- A cash flow financial statement of project signed by the developers approved auditors.

**Note : if Papers are not completed then it will be RERA-RAK's decision to wave specific conditions based n undertaking given by developer.**

**Once the developer has received the registration and project approval certificates from RERA-RAK the developer shall submit the following to the Bank.:**

1. Completed Escrow agreement provided by Bank.
2. An approval certificate to show this developer is now registered as an approved developer with RERA-RAK.
3. A project approval certificate for the specific project showing he can now open the escrow account.
4. Title Deed of the plot being developed or sale and purchase agreement from master developer if full payment not made.
5. Approved architectural design and layouts.
6. A Trade License and Certificate of registration of membership from RAK Chamber of Commerce and Industry & RERA-RAK.
7. A sample copy of a sale contract between the developer and the buyers .

8. A cash flow financial statement of project signed by the developers approved auditors

IF DEVELOPER DOES NOT HAVE ACCOUNT THEN HE MUST OPEN A REGULAR ACCOUNT AND THEN THE ESCROW ACCOUNT WILL BE OPENED

ONCE THE ESCROW ACCOUNT IS OPENED THE DEVELOPER WILL DEPOSIT FUNDS UNDER THE FOLLOWING GUIDELINES:

- ✓ Developer must advise all its clients to make all their payments in the name of the escrow account providing their unit contract number on the cheques.
- ✓ if property is financed by a Bank than the bank should make out payment in the name of the escrow account only.
- ✓ When developer makes a sale then he must provide unit sale details to the Bank for updating their records.

**Payments can be made from the escrow account under the following terms:**

- Payment for land to the Master Developer

Premium price will be paid out on a pro-rated basis over the payment period of the original property provided the transaction of the Sale of the land is not between 2 companies having the same ownership.

- Payments for Construction cost.
- ✓ Project Management Fees (up to 5% of the construction cost) that includes professional fees for consultants, architects and designers.
- ✓ Office rent, Office utility charges (for project office only)
- ✓ Marketing Expenses (up to 5% of the sold value that includes, commissions to agents and marketing specialist Cost of advertising, exhibitions and real estate broker commissions.
- ✓ Advance payment to contractor against a letter of guarantee by contractor.

**Upon completion of Project profit can be recovered if all conditions are met:**

- After completing 80% of the project.
- After completing 100% of land payment.
- Ras Al Khaimah Land Department Approval.

- RERA –RAK Approval

### **PROCEDURE FOR DISBURSEMENT OF FUNDS**

**With every disbursement request, developer must submit the following documents.**

- A payment order form
- Project Performance Certificate (PPC) signed by the developer and the project consultants.

For all other expenses developer must submit

- Payment order form
- Original invoice of expense as per approved list

**Upon presentation of Certificate of Completion by the RAK Municipality to the Bank by the developer:**

- The Bank will disburse all funds minus 5% of the sold value to the developer.
- This 5% of sold value shall be kept with the Bank for a period of one year against any claim from the buyer after which the money will be disbursed and the account to be closed.