

The Rail Land Development Authority (Development of Land and Other Works) Regulations, 2012

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Rule

THE-RAIL-LAND-DEVELOPMENT-AUTHORITY-DEVELOPMENT-OF-LA of 2012

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The Rail Land Development Authority (Development of Land and Other Works) Regulations, 2012 Published vide Notification New Delhi, the 30th January, 2013 Ministry of Railways (Rail Land Development Authority) G.S.R. 57(E). - In exercise of the powers conferred by sub-section (1) of Section 4-I read with Section 4-F of the Railways Act, 1989 (24 of 1989) the Rail Land Development Authority, with the previous approval of the Central Government, hereby makes the following regulations, namely :-

1. Short title and commencement.

(1) These regulations may be called the Rail Land Development Authority (Development of Land and Other Works) Regulations, 2012. (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.

(1) In these regulations, unless the context otherwise requires, -(a) "Act" means the Railway Act, 1989 (24 of 1989); (b) "Authority" means the Rail Land Development Authority constituted under section 4A of the Act; (c) "Central Government" means the Ministry of Railways; (d) "Consultant" means a Consultant appointed by the Authority to assist it in feasibility studies and other development activities; (e) "Executive Board" means the Board consisting of the Chairman, the Vice-Chairman and four Members appointed under section 4B of the Act; (f) "Member" means a Member of the Authority and includes its Chairman and Vice-Chairman; (g) "section" means the section of the

Act;(h)"Vice-Chairman" means the Vice-Chairman of the Authority;(2)The words and expressions used herein and not defined but defined in the Act or Rail Land Development Authority (Constitution) Rules, 2007, shall have the same meanings respectively as assigned to them in the Act or the said rules and the meaning of words 'lease', 'lessee', 'sub-lessee' used in these regulations shall also include 'license', 'licensee' and 'sub-licensee' respectively.

3. Manner of Development of Railway Land.

- Subject to directions as may be given by the Central Government in this behalf from time to time, the development of any railway land shall be effected by -(a)grant of lease of the railway land to developers who shall bear the cost of the development; or(b)developing built-up area at the Authority's own cost and leasing the same.

4. Administration of Regulations and Delegation of Powers.

(1)These regulations shall be administered by the Executive Board.(2)The Executive Board referred to in sub-regulation (1) may -(a)constitute Committees and Sub-Committees of Members and delegate to them any powers (excluding the power to make regulations); and(b)delegate powers to Vice-Chairman, Members and other officers at various levels including delineation of responsibilities and authorities of each for efficient functioning of the Authority.

Chapter II

Identification and Entrustment of Railway Land

5. Identification of Railway Land.

- The vacant railway land with potential for development shall be entrusted by the Central Government to the Authority:Provided that the Authority may from time to time, in consultation with the concerned Railway Administration, identify a railway land and send a proposal to the Central Government for considering its entrustment to the Authority in terms of the Act.

6. Review of the Entrusted Railway Land.

(1)Based on pre-feasibility or feasibility study carried out by the Authority, the Authority may seek a review from the Central Government of its decision regarding any railway land entrusted to it by giving reasons for such a review.Explanation - The expression "review" shall also include the review for cancellation of the entrustment or change in size of the entrusted railway land or change in the location of the railway land or removal by the Railway Administration of any encumbrance existing on the railway land.(2)In case the Railway Administration is not in full possession of unimpaired title of land, the title records, plans etc. or the requisite mutation does not exist in Revenue or Municipal records in favour of the Central Government, the Authority may seek a review of the entrustment made by the Central Government.

Chapter III

Terms and Conditions of Development of Railway Land

7. Written Agreement before usage of Railway Land.

- The usage of railway land under these regulations shall be permitted only after a written agreement is executed between the Authority and the lessee on the terms and conditions as determined by the Authority under these regulations.

8. No Transfer of Ownership of Railway Land.

(1)The ownership or title of the railway land shall continue to vest with the Railway Administration at all times and only the lease rights for the use of the land or the structures built on it shall be transferred by the Authority.(2)The mortgage of railway land shall not be permitted at any time and the land shall be incapable of conversion from leasehold to freehold.(3)The transfer of ownership of railway land shall not be allowed at any time unless it is specifically instructed by the Central Government.

9. Possession of Railway land until Transfer to the Developer.

- The Railway land entrusted to the Authority shall continue to be in the possession and control of the Railway Administration until the Authority decides to give possession of land to any Developer after concluding of a contract for developing the railway land.

10. Feasibility Study and Market Survey.

(1)A feasibility study and market survey shall be carried out by the Authority for each land to assess the revenue potential of the land and to select the best model of development from the point of view of revenue generation.(2)The studies referred to in sub-regulation (1) shall be carried out either in-house by its own employees or through the consultants and shall include the following, namely
-(a)verifications of boundaries, title and permitted land use of the land;(b)survey of encumbrances, encroachments and need for their rehabilitations;(c)possible usages of land;(d)best model of development for maximizing returns;(e)period of lease; and(f)valuation of the returns expected from the development of the railway land.

11. Fixation of Guidance or Reserve Price.

(1)Based on the feasibility study and market survey a guidance or reserve price of each land shall be determined by the Authority which shall act as guidance for determining the reasonableness and acceptability of any offer.(2)The guidance price shall be fixed prior to opening of bids and it shall be reviewed by the Authority in cases of significant changes in market conditions, scope or terms of development, government policies etc.(3)The guidance price may or may not be disclosed to the

bidders as may be decided by the Authority from case to case basis.

12. Period of Lease.

- Based on the feasibility study and market survey, the Authority may decide the period of lease for each railway land, subject to the direction issued by Central Government in this regard.

13. Return of Railway land to Railway Administration.

- Unless the Authority decides to offer the railway land and the buildings or structures existing on it on a fresh lease, on expiry or termination of the lease period, as the case may be, the entire railway land together With the buildings or structures existing thereon shall revert and vests upon the Railway Administration.

14. Types of Development.

(1)Subject to directions from Central Government, railway land can be developed for any purpose including but not limited to residential, commercial, institutional, hospitality, entertainment consisting of developments including but not limited to offices, shops, hotels, shopping malls, theatres, etc. as may be decided by the Authority based on the feasibility and market study:Provided that specific Approval of Central Government shall be required for residential development on railway land.(2)The Authority may also decide to develop the railway land in a phased manner, in case the phased development is considered to be more beneficial based on market assessment.

15. Local Master Plan and Building Byelaws.

- The development of the railway land shall confirm to the local master plan under building byelaws of the area where such land is located:Provided that where such local master plan or building byelaws are not available, the development for the land shall be decided by the Authority in accordance with the provisions of the National Building Code.

16. Selection of Developers.

(1)The selection of developers for lease of railway land shall be through a transparent, open, fair and competitive bidding process by inviting tenders by the Authority and the bidder offering the highest financial bid shall be declared selected subject to the fulfillment of all the terms and conditions of the tender.(2)The Authority shall endeavour to standardize the tender documents containing guidelines for inviting and finalizing tenders and terms and conditions of agreements for development under these regulations.(3)In case the development is proposed to be carried out jointly with Central or the State public sector entities, the Authority may directly negotiate with the party concerned for finalizing the agreement based on the terms and conditions prepared under these regulations and in such a case, a memorandum of understanding (MOU) may precede the agreement with the developer.

17. Lease of Built Up Area.

(1) In case the development of land is carried out with the cost being met by the Authority, the built-up area shall be leased either to a single party or to multiple parties, as may be determined by the Authority. (2) The selection by the Authority of a single party for lease of an entire building or several buildings on the land shall be carried out in the manner as provided for the selection of a developer for developing land in these regulations. (3) The leasing by the Authority of built-up areas, existing or proposed on land, to multiple parties shall be carried out either directly or through an estate agency appointed by the Authority. (4) The eligibility criteria for lessees and the minimum annual lease rent per unit of built-up area under sub-regulation (3) shall be determined by the Authority for each site prior to accepting applications for such leasing.

18. Eligibility of Bidder.

- A Bidder who meets the financial and technical eligibility criteria as per terms and conditions of the tender documents shall be eligible for participating in the bids.

19. Manner of Payment.

(1) The selected developer or lessee or sub-lessee shall have to make payments to the Authority in consideration of the lease rights on the land as may be specified in the payment schedule in the tender documents or incorporated in the agreement with the Authority, as the case may be. (2) The payments referred in sub-regulation (1) may involve one or more among following as may be specified in the tender documents - (a) upfront lease premium; (b) annual lease rent; (c) percentage revenue share; (d) any other form of payment. (3) The upfront lease premium shall have to be paid in one or more installments with or without interest and on such dates and within such time frame as may be determined by the Authority. (4) The annual rent shall have to be paid in advance before a specified date each year for the entire period of lease and the same shall be subject to a periodic increase as may be determined by the Authority. (5) The percentage revenue share shall have to be paid for the entire period of lease in such form and in such installments as may be specified for each lessee and shall be subject to a minimum guaranteed annual payment, which shall be further subject to a periodic increase, as may be determined by the Authority.

20. Security and Guarantee.

(1) Each bidder, for the due fulfillment of its obligations specified in the tender documents, shall have to deposit a bid security along with its bid for each development project for an amount and in the form as may be decided by the Authority and shall have to keep it valid until one month beyond the validity of its bid. (2) Each lessee, for the due fulfillment of its obligations contained in the agreement, shall have to deposit a performance guarantee towards fulfillment of obligations of the agreement including successful completion of the development and payment of all dues. (3) The performance guarantee shall continue until successful completion of the development of project and payment of all installments for upfront lease premium. (4) Each lessee or sub-lessee, for the due

fulfillment of its obligations contained in the agreement, shall have to deposit a security deposit towards payment of annual rent or percentage revenue share as may be determined by the Authority.(5)In case the upfront lease premium payment is to be paid in one or more installments, the Authority may require the lessee to deposit bank guarantees to secure the payment of outstanding installments.(6)In case the selected developer or the lessee, as the case may be, fails to fulfill its respective obligations in terms of the tender conditions or agreement, the respective bid security, performance guarantee and security deposit shall be party fully forfeited, as determined by the Authority.(7)In case the selected developer or the lessee or sub-lessee, as the case may be, fulfils its respective obligations in terms of the tender conditions or agreement, the respective bid security, performance guarantee and security deposit shall be refunded or returned without interest.(8)The Authority shall have the sole and exclusive right over the bid security, performance guarantee and security deposit till it is refunded with or without deduction or part forfeiture.

21. Escrow Account.

(1)In addition to the securities and guarantees specified in these regulations, the lessee may also be required to open an escrow account with a scheduled Indian bank for crediting m1d routing cash flows from the capital raised, revenues as well as expenditures of the lessee in respect of the development project and such escrow account shall be operated jointly by the Authority and the lessee under a tripartite escrow agreement signed with the escrow bank.(2)The escrow account shall be closed only after fulfillment of conditions specified in the lease agreement and in case of projects where escrow account is not necessary, the lessee shall be required to route all its cash flows through designated bank accounts only.

22. Redevelopment Works by Developer.

(1)Wherever a development project involves re-building of staff quarters, office complexes, station buildings and other railway assets either at the same location or at different location(s), as agreed in consultation with the Railway Administration, the same shall be developed in following manner as may be determined by the Authority -(a)by the developer free of cost as a part of consideration for the lease rights; or(b)by the Authority at its own cost.

23. Joint Partnership with the Developer.

- The Authority may enter into partnership or joint venture with the developer selected in terms of these regulations for development of land as may be determined by the Authority prior to inviting the bids or signing the Memorandum of Understanding, as the case may be, and the form of such partnership shall be anyone of but not limited to the following arrangements, namely :-(a)revenue sharing or development sharing arrangement;(b)equity partnership in a special purpose vehicle (SPV) created for the purpose of developing the land; or(c)any other manner decided by the Authority.

24. Extension of Time for Payment and Development.

(1)The lessee shall have to make the specified payments to the Authority and complete the development works within the time as may be determined by the Authority.(2)The extension of time may be granted for payment of dues to Authority provided the lessee applies for it in writing and agrees to pay an additional interest at three percent per annum, over and above the interest rate specified for the scheduled payment, on the overdue amount of payment as may be determined by the Authority.(3)The Extension of time may be granted for completing the development works provided the lessee applies for it in writing and agrees to pay the liquidated damages as specified in the agreement.

25. Agreement with the company.

(1)Except as may be determined by the Authority in special cases, the selected developer shall have to incorporate a company under the provisions of the Company's Act 1956 for implementing the development project on the railway land and the development or lease agreement shall be executed only with such company and not with the selected developer.(2)The said company shall take the position of the developer in the agreement and the said company shall be responsible for the design, construction, financing, marketing, operation and maintenance of the project as specified in each agreement.(3)The said company shall continue to exist until the expiry or termination of the agreement, but subject to equity lock-in conditions specified, shareholders, including the promoters can exit from the said company by disposing or transferring their shares to other parties in a manner as may be determined by the Authority.

26. Sub-lease by the Lessee.

(1)Except that under sub-regulation (3) of regulation 17, a lessee shall have the right to sub-lease either in part or in full the built-up area developed on the railway land to one or more parties in a manner and in forms of agreement as may be determined by the Authority and subject to -(a)the issue of completion certificate of a building by the nominated officer of the Authority;(b)the terms and conditions specified in the lease agreement executed between the Authority and the lessee;(c)sub-lease agreement being executed on a standard form specified by the Authority from time to time;(d)the lessee maintaining a sub-lease register containing the details of all sub-lessees at any time in such forms and manner as may be determined by the Authority; and(e)the sub-lease register being updated by the lessee periodically and a copy being submitted to the Authority in a manner as may be determined by the Authority.(2)In case the development is proposed to be carried out jointly with Central or State public sector entities, the lessee shall have the right, in addition to the rights specified under sub-regulation (1), to sub-lease -(a)the railway land in parts to several third parties or full to a single third party; or(b)the built-up area developed on the railway land in full to a single third party.(3)The third parties as referred in sub-regulation (2) may further sub-lease the built up space as provided under sub-regulations (1) subject to the terms and conditions specified in the agreement between the lessee and third party.

27. Transfer of lease and sub-lease.

(1)The lessee cannot transfer or assign the lease except by way of sub-leasing as permitted under these regulations:Provided that a lessee under sub-regulation (3) of regulation 17 cannot further sub-lease the built-up area.(2)Except as permitted under sub-regulation (3) of regulation 26, a sub-lessee cannot further sub-lease the built-up area to any other person or entity:Provided that such a lessee or a sub-lessee shall be permitted to transfer the sub-lease to another person or entity with prior permission of the Authority and the lessee, respectively, and after making a one-time transfer charge to the Authority, through the lessee in case of a sub-lessee, in a manner as may be determined by the Authority.

28. Purposes of Use of Land.

- The lessee or sub-lessee shall not use the railway land and the built-up area on the railway land for any purpose not permitted in the agreement or lease agreement and if at any time the lessee or sub-lessee is found violating this, the agreement or lease agreement shall be liable to be terminated by the Authority.

29. Usage within Railway Station Premises.

(1)The lessees and sub-lessees of a railway land situated within a railway station premises shall comply with the extant policies of the Central Government and Railway Administration with regard to maintaining cleanliness, hygiene, quality of food or beverages being sold, crowd control and public order.(2)The authorized representatives of the Railway Administration may from time to time inspect the areas under the control of lessee or sub-lessee and issue instructions if any violation is observed.(3)The lessee or sub-lessee concerned shall have to comply with such instructions within a reasonable time and advise the Railway Administration of the action taken and refusal to comply with such instructions or repeated violations shall be considered as a default on the part of the lessee or sub-lessee and action may be initiated by the Authority for termination of lease or sub-lease.

30. Maintenance of Railway land and Buildings.

(1)The lessee shall be responsible for maintenance and upkeep of the railway land and the buildings or structures developed on it at all times during the entire period of lease and until they are transferred to the Authority at the expiry or termination of the lease.(2)The buildings or structures shall have to be maintained by the lessee in good working condition and to the satisfaction of the sub-lessees and the Authority as may be specified in the agreement and further the buildings and the land shall have to be kept free from all encroachments and illegal occupation.

31. Termination of Lease.

(1)A lease agreement may be terminated :-(a)by the Authority -(i)in case of default by the lessee in fulfilling the specified obligations as provided in the Agreement; or(ii)if the Railway Land is

required by the Railway Administration for operational purposes;(b)by the lessee in case of default by the Authority in fulfilling the specified obligations as provided in the agreement.(2)In case of termination, the lessee shall be entitled to a termination payment as specified in the respective lease agreement and the termination payment shall be paid by the Authority in the manner specified in the lease agreement.

32. Substitution of Lessee.

(1)A lessee may be substituted by the Authority -(a)in case of default by the lessee in making payments to its lenders in terms of financing agreement signed between them, by the party recommended by the lender; or(b)in case of default by the lessee under the lease agreement, by bringing in another party to take over the rights and responsibilities of the lessee in terms of the lease agreement.(2)In case of such substitution, all the contracts and agreements with the sub-lessees and contractors entered into by the lessee in terms of the lease agreement shall stand transferred and novated to the new entity and the lessee shall be entitled to a substitution payment as determined by the Authority or provided in the lease agreement.

33. Rights of sub-lessee on termination or expiry of Lease.

(1)All sub-lease agreements shall be co-terminus with the lease agreement.(2)Unless otherwise specified by the Authority, in the event of termination of the lease agreement by the Authority, all sub-lease agreements shall stand terminated and sub-lessees shall have to vacate the railway premises within the period specified.(3)In case of termination of lease agreement resulting into premature termination of sub-lease a sub-lessee shall be entitled to refund of payments of rent made to the lessee in terms of the lease agreement for the period of sub-lease not availed by it.

34. Unforeseen Situations.

- Any unforeseen situation which may arise after issue of letter of acceptance or execution of lease agreement at any time during the period of lease which has not been foreseen in the tender document or the agreement, in such case the Authority shall address such conditions or situations as per the procedure provided in the tender document or the lease agreement in the mutual interest of both the parties to the agreement and the same shall be incorporated in the agreement as a modification to the contract or agreement.

Chapter IV

Procedure for Development

35. Appointment of Consultants and Estate Agencies.

(1)The Authority may appoint Consultants for feasibility studies, marketing, bid process management, legal services, verification or validation of land records and such other services or

activities as and when required by the Authority and such Consultants may be appointed through single, limited, open tender or as per the tendering system decided by the Authority.(2)The Authority may appoint estate agencies for assisting the Authority in subleasing of built-up spaces to multiple parties or monitoring the various lease agreements and such other activities as may be required for successful development of the railway land as may be determined by the Authority and such estate agencies may be appointed as may be decided by the Authority.

36. Issue of Tender and Public Notice.

(1)In case of selection of a developer or lessee through an open tender, Vice-chairman or the officer authorized by him in this behalf shall cause a tender notice to be issued, in the manner as determined by the Authority.(2)In case of lease of built-up areas to multiple parties, Vice-chairman or the officer authorized by him in this behalf shall cause a public notice to be issued, in the manner as determined by the Authority, inviting applications for the allotment of the built-up areas.

37. Tender Document Fee.

(1)A bidder can obtain tender documents from the office of the Authority on payment of a document fee as may be determined by the Authority and in case a bidder decides to download the tender document from the Authority's official website, it shall have to deposit document fee together with its bid at the time of bid submission.(2)A tender shall be liable to be rejected by the Authority unless it is accompanied with the requisite document fee or evidence of payment of such fee.

38. Right of Rejection of Bid and Cancellation of Bidding Process.

- A bid not meeting the requirements specified in the tender conditions shall be rejected by the Authority and the Authority may cancel a tender process without assigning any reason.

39. Opening of Financial Bid.

- The financial bids of only those bidders shall be opened who are found eligible in terms of the requirements specified in the tender document and the financial bids of those bidders who are found to be ineligible shall be returned to them unopened.

40. Letter of Acceptance.

(1)The selected bidder shall be issued a letter of acceptance (LOA) in duplicate by the Authority.(2)One copy of the LOA shall have to be signed and returned by the selected bidder as a token of acceptance.(3)The LOA shall form the agreement between the selected bidder and the Authority for fulfillment of the terms and conditions specified in the LOA.(4)The lessee shall not have any other right until a lease agreement is signed and the conditions precedent, if any specified therein, have been fulfilled.

41. Execution of Agreement.

(1)The selected bidder shall have to fulfill the pre conditions within the time period specified in the tender document or LOA before execution of the lease agreement.(2)The pre-condition referred to in the sub-regulation (1) shall be but not limited to the following, namely :-(a)payment of the specified amount of the lumpsum payment;(b)creation of a company as per the provisions of the Companies Act, 1956, if required;(c)submission of Performance Guarantee, etc.(3)All agreements made under these regulations shall be executed on behalf of the Authority by the Vice-Chairman or such officer as may be authorised by him in this behalf.(4)The selected developer shall execute an agreement in such form as may be specified by the Authority.

42. Possession of the Railway Land.

(1)The lessee shall be provided the possession of the railway land only after it fulfills the conditions precedent, if so specified in the lease agreement.(2)Subject to any phasing plan and time bound removal of an existing encumbrance, if any, as specified in the lease agreement, encumbrance free railway land shall be provided to the lessee.(3)A joint demarcation of the site shall be carried out by the Authority, the Railway Administration and the lessee and a proper "land plan with schedule" shall be prepared and signed jointly between the Authority, Railway Administration and the lessee.(4)The physical handing over of the railway land shall be effected from the date of signing of "land plan with Schedule".

43. Copy of Agreement.

(1)The Authority shall make available a copy of the agreement to Railway Administration for information and record.(2)The Authority shall carry out periodic reviews of the projects along with Railway Administration and the lessee.

44. Assistance from Railway Administration.

(1)The Authority shall seek assistance of the Railway Administration in facilitating the lessee in obtaining access to all necessary facilities and utilities (subject to availability) during the project execution stage, including water, electricity, telecom facilities at the rates and on terms of the Central Government.(2)The Authority shall seek assistance of the Railway Administration, wherever required, in obtaining various clearances and authorizations in connection with development of railway land by the lessee from local municipal and other concerned authorities.(3)The Authority with the assistance of the Railway Administration shall provide support to lessee on best effort basis in obtaining clearances and connection to utility services from local authorities for the development of the project.

Chapter V

Miscellaneous

45. Re-Development Work of Railway Administration.

- The Authority in consultation with Railway Administration shall get a "Phasing Plan" prepared, which shall indicate the time wise schedule of construction of the assets.

46. Project Management.

- The Authority may engage Project Management Consultants for ensuring supervision and quality of the development of land, redevelopment works and execution of other works.

47. Enabling Works for Development Project.

- The ancillary works like construction of boundary walls, removal of encumbrances or structures existing on railway land, construction of rehabilitation works for the Railway Administration etc. that are necessary for the development of a railway land may be carried out by the Authority at its cost to enhance the value of the land prior to invitation of bids, if the Authority so decides.

48. Works entrusted by the Central Government.

- Works entrusted by the Central Government under clause (iv) of sub-section (2) of section 4D of the Act may consist of any railway work which shall be executed the Authority as per directions given by the Central Government and as per terms and conditions decided by the Authority and such works may include development of new railway stations, redevelopment of existing railway stations, development of staff colonies, development of offices and such other works including maintenance thereof.

49. Methods of Execution.

(1)The Railway works entrusted by the Central Government shall be executed either through funds provided by the Central Government by appointing a contractor or by exploiting the revenue potential of the railway land available at the site by appointing a developer as may be determined by the Authority.(2)In case the work is to be executed by exploiting the revenue potential of the railway land, such railway land shall be identified, the schemes and plans shall be prepared and the Central Government shall be approached for entrustment of the proposed railway land to the Authority.

50. Consultancies under clause (iii) sub-section (2) of section 4D.

- The Authority may carry out consultancies, professional services and such other works for the Government, any local authority or any other organization on such terms and conditions as may be

agreed upon between the Authority and such an entity and the Authority may create a specialized wing within its organization for undertaking such activities.

51. Relaxation of Regulations.

- The Authority may in public interest and for reasons to be recorded in writing relax generally or specifically any of these regulations with the approval of the Central Government.

52. Interpretation.

- In case of any ambiguity on the meaning of any clause of this regulation, the interpretation of the Authority shall be final.