

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

**FORM S-8
REGISTRATION STATEMENT**
Under
THE SECURITIES ACT OF 1933

OPENDOOR TECHNOLOGIES INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

30-1318214
(I.R.S. Employer
Identification No.)

410 N. Scottsdale Road, Suite 1600
Tempe, AZ
(Address of principal executive offices)

85281
(Zip code)

OPENDOOR TECHNOLOGIES INC. 2020 EMPLOYEE STOCK PURCHASE PLAN
(Full title of the plan)

Carrie Wheeler
Chief Executive Officer
410 N. Scottsdale Road, Suite 1600
Tempe, AZ 85281
(Name and address of agent for service)

(415) 896-6737
(Telephone number, including area code, of agent for service)

Copies to:

Phillip S. Stoup
Latham & Watkins LLP
505 Montgomery Street, Ste. 2000
San Francisco, CA 94111
(415) 391-0600

Sydney Schaub
Chief Legal Officer
Opendoor Technologies Inc.
410 N. Scottsdale Road, Suite 1600
Tempe, AZ 85281
(415) 896-6737

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer
Non-accelerated filer Smaller reporting company
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

EXPLANATORY NOTE

This Registration Statement on Form S-8 (this “**Registration Statement**”) is being filed, pursuant to General Instruction E of Form S-8, by Opendoor Technologies Inc. (the “**Company**”) to register an additional 12,535,398 shares of the Company’s common stock, par value \$0.0001 per share (the “**Common Stock**”), issuable under the Opendoor Technologies Inc. 2020 Employee Stock Purchase Plan (the “**ESPP**”) pursuant to the provisions of the ESPP providing for annual automatic increases in the number of shares of Common Stock reserved for issuance under the ESPP. These additional shares of Common Stock are securities of the same class as other securities for which an original Registration Statement on Form S-8 relating to the same benefit plan was filed with the Securities and Exchange Commission (the “**SEC**”) on [March 8, 2021](#) (File No. 333-253993) (the “**Prior Form S-8**”). Pursuant to General Instruction E of Form S-8, the contents of Prior Form S-8 are incorporated by reference herein.

In accordance with the instructional note to Part I of Form S-8 as promulgated by the SEC, the information specified by Part I of the Form S-8 has been omitted from this Registration Statement.

PART II INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, which have been filed by the Company with the SEC pursuant to the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), are incorporated by reference in, and shall be deemed to be a part of, this Registration Statement:

(a) the Company’s Annual Report on [Form 10-K](#) for the year ended December 31, 2022, filed with the SEC on February 23, 2023 (File No. 001-39253);

(b) the Company’s Quarterly Report on [Form 10-Q](#) for the quarter ended March 31, 2023, filed with the SEC on May 4, 2023 (File No. 001-39253);

(c) the Company’s Current Reports on Form 8-K (File No. 001-39253) filed on [January 24, 2023](#), [February 23, 2023](#) and [March 15, 2023](#); and

(d) the description of the Company’s shares of Common Stock contained in the Company’s Registration Statement on [Form 8-A](#) (File No. 001-39253), filed with the SEC on December 18, 2020, including any amendments or reports filed for the purpose of updating such description (including [Exhibit 4.6](#) to the Form 10-K filed on March 4, 2021).

All reports and other documents filed by the Company with the SEC pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date hereof and prior to the filing of a post-effective amendment which indicates that all securities offered pursuant to this Registration Statement have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such documents or reports.

For purposes of this Registration Statement, any document or any statement contained in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or superseded to the extent that a subsequently filed document or a statement contained therein, or in any other subsequently filed document which also is or is deemed to be incorporated by reference, modifies or supersedes such document or such statement in such document. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Under no circumstances shall any information furnished under Item 2.02 or 7.01 of Form 8-K be deemed incorporated herein by reference unless such Form 8-K expressly provides to the contrary.

Item 6. Indemnification of Directors and Officers.

Subsection (a) of Section 145 of the General Corporation Law of the State of Delaware (the “**DGCL**”) empowers a corporation to indemnify any person who was or is a party or who is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person’s conduct was unlawful.

Subsection (b) of Section 145 empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person acted in any of the capacities set forth above, against expenses (including attorneys’ fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 145 further provides that to the extent a director or officer of a corporation has been successful on the merits or otherwise in the defense of any action, suit or proceeding referred to in subsections (a) and (b) of Section 145, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection therewith; that indemnification provided for by Section 145 shall not be deemed exclusive of any other rights to which the indemnified party may be entitled; and the indemnification provided for by Section 145 shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of such person’s heirs, executors and administrators. Section 145 also empowers the corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify such person against such liabilities under Section 145.

Section 102(b)(7) of the DGCL provides that a corporation’s certificate of incorporation may contain a provision eliminating or limiting the personal liability of a director or officer to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director or officer, provided that such provision shall not eliminate or limit the liability of a director or officer (i) for any breach of the director’s or officer’s duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, (iv) for any transaction from which the director derived an improper personal benefit, or (v) for an officer in any action by or in the right of the corporation.

Additionally, our certificate of incorporation limits the liability of our directors and officers to the fullest extent permitted by the DGCL, and our bylaws provide that we will indemnify them to the fullest extent permitted by such law. We have entered into and expect to continue to enter into agreements to indemnify our directors,

executive officers and other employees as determined by our board of directors. Under the terms of such indemnification agreements, we are required to indemnify each of our directors and officers, to the fullest extent permitted by the laws of the state of Delaware, if the basis of the indemnitee's involvement was by reason of the fact that the indemnitee is or was our director or officer or was serving at our request in an official capacity for another entity.

We must indemnify our officers and directors against all reasonable fees, expenses, charges and other costs of any type or nature whatsoever, including any and all expenses and obligations paid or incurred in connection with investigating, defending, being a witness in, participating in (including on appeal), or preparing to defend, be a witness or participate in any completed, actual, pending or threatened action, suit, claim or proceeding, whether civil, criminal, administrative or investigative, or establishing or enforcing a right to indemnification under the indemnification agreement. The indemnification agreements also require us, if so requested, to advance all reasonable fees, expenses, charges and other costs that such director or officer incurred, provided that such person will return any such advance if it is ultimately determined that such person is not entitled to indemnification by us. Any claims for indemnification by our directors and officers may reduce our available funds to satisfy successful third-party claims against us and may reduce the amount of money available to us.

Item 8. Exhibits.

The following documents are filed as exhibits to this Registration Statement:

Exhibit Number	Description of Exhibit
4.1	<u>Certificate of Incorporation of Opendoor Technologies Inc. (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K (File No. 001-39253) filed on December 18, 2020).</u>
4.2	<u>Amended and Restated Bylaws of Opendoor Technologies Inc. (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K (File No. 001-39253) filed on January 24, 2023).</u>
4.3	<u>Specimen Common Stock Certificate of Opendoor Technologies Inc. (incorporated by reference to Exhibit 4.5 to Amendment No. 1 to the Registration Statement on Form S-4 (File No. 333-249302) filed on November 6, 2020).</u>
5.1*	<u>Opinion of Latham & Watkins LLP.</u>
23.1*	<u>Consent of independent registered public accounting firm (Deloitte & Touche LLP).</u>
23.2*	<u>Consent of Latham & Watkins LLP (included in Exhibit 5.1).</u>
24.1*	<u>Power of Attorney (included on the signature page of the Registration Statement).</u>
99.1	<u>Opendoor Technologies Inc. 2020 Employee Stock Purchase Plan (amended and restated effective as of February 8, 2023) (incorporated by reference to Exhibit 10.15 to the Annual Report on Form 10-K (File No. 001-39253) filed on February 23, 2023).</u>
107*	<u>Filing Fee Table.</u>

* Filed herewith.

Item 9. Undertakings.

(a) The undersigned Company hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, that (A) paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the registration statement is on Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by or furnished to the SEC by the Company pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Company hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Company's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Company of expenses incurred or paid by a director, officer or controlling person of the Company in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Company will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Tempe, State of Arizona, on May 4, 2023.

OPENDOOR TECHNOLOGIES INC.

By: /s/ Carrie Wheeler

Name: Carrie Wheeler

Title: Chief Executive Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints each of Carrie Wheeler and Christina Schwartz, acting alone or together with another attorney-in-fact, as his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for such person and in his or her name, place and stead, and in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the SEC, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as fully and to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the date indicated.

<u>SIGNATURE</u>	<u>TITLE</u>	<u>Date</u>
<u>/s/ Carrie Wheeler</u> Carrie Wheeler	Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	May 4, 2023
<u>/s/ Christina Schwartz</u> Christina Schwartz	Interim Chief Financial Officer <i>(Principal Financial and Accounting Officer)</i>	May 4, 2023
<u>/s/ Adam Bain</u> Adam Bain	Director	May 4, 2023
<u>/s/ Cipora Herman</u> Cipora Herman	Director	May 4, 2023
<u>/s/ Jonathan Jaffe</u> Jonathan Jaffe	Director	May 4, 2023
<u>/s/ Pueo Keffer</u> Pueo Keffer	Director	May 4, 2023
<u>/s/ Jason Kilar</u> Jason Kilar	Director	May 4, 2023
<u>/s/ Glenn Solomon</u> Glenn Solomon	Director	May 4, 2023
<u>/s/ John Rice</u> John Rice	Director	May 4, 2023
<u>/s/ Eric Wu</u> Eric Wu	Director	May 4, 2023

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LATHAM & WATKINS LLP

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London	Tel Aviv
Los Angeles	Tokyo
Madrid	Washington, D.C.

May 4, 2023

Opendoor Technologies Inc.
 410 N. Scottsdale Road
 Suite 1000
 Tempe, AZ 85281

Re: Opendoor Technologies Inc. – Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as special counsel to Opendoor Technologies Inc., a Delaware corporation (the “*Company*”), in connection with the preparation and filing by the Company on the date hereof with the Securities and Exchange Commission (the “*Commission*”) of a Registration Statement (the “*Registration Statement*”) on Form S-8 under the Securities Act of 1933, as amended (the “*Act*”), relating to the issuance of up to 12,534,135 shares (the “*Shares*”) of common stock, par value \$0.0001 per share, of the Company, which may be issued pursuant to the Opendoor Technologies Inc. 2020 Employee Stock Purchase Plan (the “*Plan*”). This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or related prospectus, other than as expressly stated herein with respect to the issuance of the Shares.

As such counsel, we have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter. With your consent, we have relied upon certificates and other assurances of officers of the Company and others as to factual matters without having independently verified such factual matters. We are opining herein as to the General Corporation Law of the State of Delaware, and we express no opinion with respect to any other laws.

Subject to the foregoing and the other matters set forth herein, it is our opinion that, as of the date hereof, when the Shares shall have been duly registered on the books of the transfer agent and registrar therefor in the name or on behalf of the purchasers, and have been issued by the Company for legal consideration in excess of par value in the circumstances contemplated by the Plan, assuming in each case that the individual grants or awards under the Plan are duly authorized by all necessary corporate action and duly granted or awarded and exercised in accordance of the law and the Plan (and the agreements and awards duly adopted thereunder and in accordance therewith), the issue and sale of the Shares will have been duly authorized by all necessary corporate action of the Company, and the Shares will be validly issued, fully paid and nonassessable. In rendering the foregoing opinion, we have assumed that the Company will comply with all applicable notice requirements regarding uncertificated shares provided in the General Corporation Law of the State of Delaware.

LATHAM & WATKINS LLP

This opinion is for your benefit in connection with the Registration Statement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of the Act. We consent to your filing this opinion as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Latham & Watkins LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated February 23, 2023, relating to the financial statements of Opendoor Technologies Inc. and the effectiveness of Opendoor Technologies Inc.'s internal control over financial reporting, appearing in the Annual Report on Form 10-K of Opendoor Technologies Inc. for the year ended December 31, 2022.

/s/ DELOITTE & TOUCHE LLP

San Francisco, CA

May 4, 2023

Calculation of Filing Fee Table

Form S-8
(Form Type)

Opendoor Technologies Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

Security Type	Title of Securities to be Registered	Fee Calculation Rule	Amount to be Registered ⁽¹⁾	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common Stock, \$0.0001 par value per share	Other ⁽³⁾	12,535,398 ⁽²⁾	\$1.139 ⁽³⁾	\$14,277,818.322 ⁽³⁾	\$0.00011020	\$1,573.42
	Total Offering Amounts		12,535,398		\$14,277,818.322		\$1,573.42
Total Fees Previously Paid							—
Total Fee Offsets							—
Net Fee Due							\$1,573.42

- (1) Pursuant to Rule 416(a) promulgated under the Securities Act of 1933, as amended (the “*Securities Act*”), this registration statement on Form S-8 (this “*Registration Statement*”) shall also cover any additional shares of common stock, par value \$0.0001 per share (“*Common Stock*”), of Opendoor Technologies Inc. (the “*Company*”) that become issuable under the Company’s 2020 Employee Stock Purchase Plan (the “*ESPP*”) by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of Common Stock.
- (2) Represents 6,161,755 and 6,373,643 additional shares of Common Stock available for issuance as a result of the annual automatic increase on January 1, 2022 and January 1, 2023, respectively, under the ESPP.
- (3) Estimated in accordance with Rule 457(c) and (h) under the Securities Act. The offering price per share and the aggregate offering price are calculated based on 85% of the average of the high and low sale prices per share of the Common Stock as reported on the Nasdaq Global Select Market on April 28, 2023. Pursuant to the ESPP, the purchase price of the shares of Common Stock reserved for issuance thereunder will be 85% of the lower of the fair market value of the Common Stock on (i) the applicable offer period start date and (ii) the applicable purchase date.