

UTTAR PRADESH REAL ESTATE PROJECT (MAINTENANCE AND OPERATION OF SEPARATE BANK ACCOUNT) DIRECTIONS, 2020

Uttar Pradesh Real Estate Regulation Authority (“**Authority**”) had released Uttar Pradesh Real Estate Project (Maintenance And Operation Of Separate Bank Account) Directions, 2020 (“**Directions**”) on June 5, 2020 under the powers conferred to the Authority under Section 37 of the Real Estate (Regulation And Development) Act, 2016 (“**RERA Act**”).

❑ OBJECTIVE OF THE DIRECTIONS:

- ≡ The Directions had been issued with the aim to provide relief to allottees and ensuring stringent compliance on the part of the promoter to open and register Separate Bank Account for every project registered with the Authority.
- ≡ The requirement for the Authority to issue the Directions came on the basis of numerous complaints filed by the allottees against promoters wherein some of the promoters had not been maintaining Separate Bank Account as required under Section 4(2)(I)(D) of RERA Act and not complying with the procedure laid down for the withdrawal and utilization of the money from the separate project account.
- ≡ Further, the Authority also witnessed that some promoters are allowing lien to be placed on the Separate Bank Account of the project by the Bank and the money of allottees was being used by the promoters in expenditures and activities not related to the project.

❑ IMPORTANT DEFINITIONS UNDER THE DIRECTIONS:

- ≡ ‘No Lien Account’ means account without any third-party rights or security interests.
- ≡ ‘Separate Bank Account’ means the separate account to be maintained by the promoter in a scheduled bank as per Section 4(2)(I)(D) of RERA Act, to cover cost of construction and land cost of the project.
- ≡ ‘Ongoing Projects’ means the projects ongoing on the date of commencement of RERA Act for which completion certificate had not been issued before May 1, 2017.

GUIDELINES UNDER THE DIRECTIONS

❑ OPENING OF THE ACCOUNT:

- ≡ A promoter is required to open a Separate Bank Account for real estate project before applying for its registration with the Authority. The details of the Separate Bank Account are required to be appended with the application for the registration of the project.
- ≡ The name of the account has to be registered with the Authority in the format- “**[Promoter Name] RERA Designated Account For [Project Name]**”.
- ≡ Only 1 (one) Separate Bank Account for a real estate project shall be opened which shall be a No Lien Account.
- ≡ While applying for registration of the project with the Authority, the promoter is required to submit affidavit in format prescribed under Form RA-1 appended with copy of passbook/bank statement of the account.
- ≡ In case of more than one promoter in a project, contract or legal arrangements for operating the account shall be formulated by the principal promoter who is registering the project and the same shall be submitted with application for registration.
- ≡ In case of Ongoing Projects, the promoter is required to submit affidavit under Form RA-2, appended with latest copy of passbook/bank statement and copy of Engineer Certificate under Form REG-2, Chartered Accountant Certificate under Form REG-3 and Architect Certificate under Form REG-4 submitted to the bank. The promoters who have not complied with this requirement shall submit the aforementioned certificates within 30 (thirty) days from the date of this Directions.
- ≡ In case the bank account declared by the promoter with the Authority is not a Separate Bank Account, such promoter is required to submit an application for change of Separate Bank Account within 2 (two) weeks from the date of the Directions.

❑ DEPOSIT IN ACCOUNT:

- ≡ Money collected from allottees from time to time after deducting GST, to be deposited by the promoter in the Separate Bank Account.
- ≡ The Promoter:
 - to deposit 100% of the project finance availed from financial/lending institution in the Separate Bank Account.

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- to utilize 70% of the amount collected from allottees from time to time, for the construction and cost of land only. Entire amount of the project finance shall be utilized for the construction and development work only.
 - to not use more than 30% of the amount collected from the allottees for any work other than construction and cost of land of the project.
- ≡ Can transfer not more than 30% of the amount collected from allottees to some other account for other expenditure relating to project or the company provided that not less than 70% of all the money collected from allottees and entire amount availed as project finance has been spent on the construction and cost of land only which is to be recorded in the certificate issued by chartered accountant under Form REG-3. The project finance amount deposited in Separate Bank Account will not be taken into consideration while withdrawal of up to 30% of the amount collected from allottees for purpose other than construction and cost of land of the project. Expenditure like the amount of the principal amount or the interest or the compensation to be paid to the allottees will be paid by the promoter from this window of 30% only.
- **WITHDRAWALS FROM THE ACCOUNT:**
- ≡ Money cannot be withdrawn by the promoter except in the following conditions:
- In accordance with second proviso to Section 4(2)(I)(D) of the RERA Act, the amounts from the Separate Bank Account shall be withdrawn by the promoter after it is certified by an architect, an engineer and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project.
 - In accordance with Rule 5 of UP RERA Rules, 2016 for the purpose of Section 4(2)(I)(D) of RERA Act, the land cost be incurred by the promoter, whether as an outright purchase, lease charges and will include the charges incurred to obtain the approval of the competent authority.
 - The cost of construction shall be incurred by the promoter towards the on-site expenditure for the physical development of the project, including the payment of interest from Bank, Financial Institution, NBFC. The interest on unsecured loan shall be permissible at SBI-MCLR Rate for any project where finance availed is towards the construction of the project.
- The Authority may permit the promoter to withdraw the balance available in the Separate Bank Account after completion of the project and fulfillment of the conditions provided under Section 11 (*Functions and Duties of Promoter*) and Section 17 (*Transfer Of Title*) of RERA Act.
- **REPORTING TO THE AUTHORITY:**
- ≡ The promoter shall upload the 3 (three) certificates issued by Engineer, Chartered Accountant and Architect submitted to the bank on the website of the Authority while filing the quarterly progress report of the project.
- ≡ The promoter is required to get his account audited within 6 (six) months after the end of every financial year by a chartered accountant in practice and shall upload on the website of the Authority, a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the amounts collected for a particular project have been utilized for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.
- ≡ The annual report on statement of accounts shall be in Form REG-5 as provided under the Regulation 4 of the UP RERA (General) Regulations, 2019. In case the Form REG-5 issued by the statutory auditor reveals that any certificate issued by project architect, engineer or the chartered accountant contains false or incorrect information and the amounts collected for a particular project have not been utilized for the project and the withdrawal has not been commensurate with the proportion to the percentage of the completion of the project, the Authority in addition of taking penal actions as contemplated in RERA Act and the rules allied thereunder, shall also take up the matter with the concerned regulatory body of the said professionals i.e., architect, engineer or chartered accountant for necessary penal action against them including disbarment.
- ≡ The chartered accountant shall verify that there is no lien or charge on the Separate Bank Account. The promoter and/or chartered accountant shall obtain a no lien/charge certificate from the bank and upload the same on the Authority's website.
- **CHANGING OF SEPARATE BANK ACCOUNT OF THE PROJECT:**
- ≡ The Authority may permit the promoter to change the Separate Bank Account on the following conditions declared at the time of registration of the project:

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- The promoter has not declared the separate account of the project at the time of the registration of the project with the Authority,
- The bank account declared on the website of the Authority is common to more than one project of the promoter.
- The bank account declared on the website of the Authority is a general collection account of the promoter and not a separate account of the project.
- The bank account is with a bank located outside the district where the project is located. For ease of operation, the promoters may be allowed to retain the accounts of the ongoing projects located in Delhi-NCR.
- The promoter availing a project finance loan for the construction of the project from another bank and such other bank insists for opening of the project account with it. However, such other bank cannot be allowed to have any type of lien or charge on the project account and in case the promoter has violated these provisions, it will be liable to penalty up to 5% of the cost of the project. The Authority may also revoke the registration of the project.
- That the RBI has placed restriction on the operation of the bank account at a particular bank.

❑ **POWERS OF THE AUTHORITY ON THE SEPARATE ACCOUNT OF THE PROJECT:**

- ≡ The Authority upon revocation of the registration of the project shall direct the bank holding the project bank account as required under Section 4(2)(I)(D) of RERA Act to freeze the account and take necessary actions including consequent de-freezing of the said account towards facilitating the remaining development works in accordance with Section 8 (*Obligation of Authority Consequent Upon Lapse Of Or On Revocation Of Registration*) of the RERA Act.
- ≡ The Authority in the interest of the allottees and the project, get the separate bank account along with any other account(s) in which the money from the allottees of the project has been collected or verified/audited by an auditing firm/auditor/chartered accountant from time to time in discharge of its functions under Section 34 of the RERA Act and Rule 19 of UP RERA Rules, 2016. The promoter shall facilitate such auditor or the chartered accountant by providing all information and documents as may be required to complete such verification or the audit as per the orders of the Authority. Non-compliance of these Directions by the promoter in any manner will be

punishable under Section 63 (*Penalty For Failure To Comply With Orders Of Authority By Promoter*) of the RERA Act with penalty which may be up to 5% of the cost of the project.

- ≡ The cost of such audit or verification of the account of the project will be borne by the promoter in the manner decided by the Authority.

❑ **CLOSURE OF SEPARATE BANK ACCOUNT ON COMPLETION OF THE PROJECT:**

- ≡ On completion of the project as per sanctioned design and the specifications, the promoter will submit the following documents on the website of the Authority:

- Completion Certificate of the project issued by the competent authority.
- Proof of formation of association or the society or the cooperative society of the allottees under the provisions of Section 4(6) of the Uttar Pradesh Apartment (Promotion Of Construction, Ownership and Maintenance) Act, 2010.
- Certificate from architect in Form RA-7 that the project has been completed as per the approved design and specifications.
- Certificate in Form REG-2 and Form REG-3 of the UP RERA (General) Regulations, 2019.
- Proof of the promoter having executed a registered conveyance deed in favour of the allottees along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and handed over the physical possession of the plot, apartment of the building as the case may be, to the allottees or the competent authority as the case may be, in real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws.
- Declaration supported by notarized affidavit in the format prescribed in Form RA-8.
- The Authority will issue a formal permission to the promoter to close the separate account of the project and withdraw the balance amount, if any.

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