

Highlights:**Corporate Brief**

- MCA notification on Companies (Compromises, arrangement and amalgamations) second amendment rules, 2020.
- MCA notification on Companies (Appointment and qualification of directors) fifth amendment rules, 2020.
- MCA notification on Companies (Incorporation) third amendment rules, 2020
- SEBI circular on e-voting facility provided by listed entities.
- SEBI circular on relaxation of timelines for compliance with regulatory requirements.

RERA Brief

- Circular issued by Goa Real Estate Regulatory Authority notifying documents and information required for registration of real estate projects regarding sketch plans for phase wise or part development;
- Notification issued by Karnataka Real Estate Regulatory Authority with respect to unregistered projects;
- Public Notice issued by Kerala Real Estate Regulatory Authority to the promoters of the ongoing Real Estate Projects regarding penalty for delayed submission of application for registration of on-going projects;
- Order issued by the Rajasthan Real Estate Regulatory Authority regarding applicable fee and extension for registration of real estate projects;
- Notification issued by K-RERA for further extension by 3 (three) months for completion of real estate projects in view of prevailing COVID-19 situation;
- Notification issued by the Uttar Pradesh Real Estate Regulatory Authority notifying the Real Estate Project (Maintenance and Operation of Separate Bank Account) Revised Directions, 2020;
- Order issued by Gujarat Real Estate Regulatory Authority for extension of due date for submission of form- 5 for FY 2019-20; and
- Notice issued by the Maharashtra Real Estate Regulatory Authority for continuation of online services and operations.

Litigation Brief

- Mere refund of consideration together with interest would not disentitle the flat purchasers from claiming compensation for delay.

Corporate Brief

- ➔ **Vide notification No. "F. No. 02/31/CAA/2013-CL-V" dated 17.12.2020, of Ministry of Corporate Affairs, ('MCA'):**

It was notified that:

Amendment of the Companies (Compromises, arrangements and amalgamations) Rules, 2016 by Central**Government: Companies (Compromises, arrangements and amalgamations) Second amendment Rules, 2020**

- A new term "corporate action" has been defined as follows: "corporate action" means any action taken by the company, relating to transfer of shares and all the benefits accruing on such shares namely, bonus shares, split, consolidation, fraction shares and right issue to the acquirer."
- the following rule, i.e. rule 26A shall be inserted after rule 26, which describes the procedure for transfer of shares held by minority shareholders holding shares in demat form, in favour of the acquirer, which is as follows:
 - (1) The company will verify the details of the minority shareholders holding shares in demat form, within two weeks from the date of receipt of the amount equal to the price of shares (as determined by a registered valuer) to be acquired by the acquirer.
 - (2) Subsequently, the company shall send a notice to such minority shareholders about a cut-off date (cut-off date shall be at least one month after the date of sending of the notice). On the cut-off date, the shares of minority shareholders shall be debited from their account and credited to the designated demat account of the company, unless the shares are credited in the account of the acquirer, as specified in such notice, before the cut-off date.
(if the "cut-off date" falls on a holiday, the next working date shall be deemed to be the "cut-off date")
 - (3) A copy of the notice which is served to the minority shareholders, is simultaneously published in two widely circulated newspapers (one in English and one in vernacular language) in the district in which the registered office of the company is situated and also uploaded on the website of the company.
 - (4) The company shall inform the depository immediately after publication of notice regarding the cut-off date and submit the following declarations:
 - (a) The corporate action is in pursuance to section 236 of Companies Act, 2013.
 - (b) The minority shareholders whose shares are held in demat form have been informed about the corporate action
 - (c) The minority shareholders shall be paid by the company immediately after completion of corporate action;
 - (d) Company is solely responsible for any dispute or complaints arising out of such corporate action.
 - (5) For effecting transfer of shares through corporate action, the Board shall authorise Company Secretary, or in his absence, any other person, to inform the depository, regarding above mentioned cut-off date and such declarations.

- (6) On the cut-off date, the depository shall transfer the shares of the minority shareholders who have not transferred their shares in favour of the acquirer and intimate the company about the same.
- (7) Upon receipt of such intimation, the company shall immediately disburse the price of the shares so transferred, to each of the minority shareholders after deducting the applicable stamp duty, which shall be paid by the company.
- (8) Upon such disbursement, the company shall inform the depository to transfer the shares of such shareholders, from designated demat account of the company, to the demat account of the acquirer.
(In case the disbursement could not be made immediately by the company upon receipt of intimation, the company shall continue to disburse payment to the entitled shareholders and transfer the shares to the demat account of the acquirer only after such disbursement).
- (9) In case, where there is a specific order of Court or Tribunal, or statutory authority restraining any transfer of such shares and payment of dividend, or where such shares are pledged or hypothecated, the depository shall not transfer the shares of the minority shareholders to the designated demat account of the company.

⇒ **Vide notification No. "F. No. 08/04/2018-CL-I - Part-I" dated 18.12.2020, of Ministry of Corporate Affairs, ('MCA'):**

It was notified that:

Amendment of the Companies (Appointment and qualification of directors) Rules, 2014 by Central Government: Companies (Appointment and qualification of directors) fifth amendment Rules, 2020

- Rule-6: For Compliances required by a person eligible and willing to be appointed as an independent director, now includes the following changes:
 - a. The timeline for passing an online proficiency self-assessment test conducted by the institute has been increased from one year to two years for every individual, who is or intends to get appointed as an independent director, and has applied for inclusion of his name in the data bank.
 - b. The first proviso has been broadened as follows:
 - i. For availing the exemption from passing the online proficiency self-assessment exam, period of service for an individual has been decreased from 10 years to 3 years, as on the date of inclusion of name in data bank.

- ii. For such above mentioned exemption, service of such individual shall be as a director or a key managerial person in:
 1. Body corporate listed on any recognized stock exchange or in a country which is a member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market and such member state is a member of the International Organization of Securities Commissions; or
 2. Bodies corporate incorporated outside India having a paid-up share capital of US\$ 2 million or more; or statutory corporations set up under an Act of Parliament or any State Legislature carrying on commercial activities.

- iii. For availing such exemption, such individual shall be in the pay scale of Director or above in the Ministry of Corporate Affairs or the Ministry of Finance or Ministry of Commerce an Industry or the Ministry of Heavy Industries and Public Enterprises and having experience in handling the matters relating to corporate laws or securities laws or economic laws or

- iv. In the pay scale of Chief General Manager or above in the SEBI or the RBI or IRDA or Pension Fund Regulatory and Development Authority and having experience in handling the matters relating to corporate laws or securities laws or economic laws.

- c. For the second proviso, period during which an individual was acting as a director or as a key managerial personnel in two or more [companies or bodies corporate] at the same time shall be counted only once. The timeline for calculation of such period has been decreased from 10 years to 3 years.
- d. For explanation (b) to rule 6, the score for availing the exemption from passing such online proficiency self-assessment test has been decreased from 60% to 50%.

⇒ **Vide notification No. "F. No. 1/13/2013-CL-V-Vol. III" dated 24.12.2020, of Ministry of Corporate Affairs, ('MCA'):**

It was decided that:

Amendment of Companies (Incorporation) rules, 2014 by Central Government: (Incorporation) third amendment rules, 2020)

In the Companies (Incorporation) Rules, 2014, the following rule, i.e. rule 9A shall be inserted after rule 9, with effect from 26.01.2021 for Extension of period of name reserved up to:

- a) Forty days from the date of approval by Registrar, on payment of fees of rupees one thousand made before the expiry of twenty days from the date of approval by the Registrar.
- b) Sixty days from the date of approval from Registrar on payment of fees of rupees two thousand made before the expiry of forty days referred above;
- c) Sixty days from the date of approval from Registrar on payment of fees of rupees three thousand made before the expiry of forty days referred above;

Provided that the Registrar shall have the power to cancel the reserved name if the name was applied by furnishing wrong information and such company has not been incorporated.

➤ **Vide Circular No. SEBI/HO/CFD/CMD/CIR/P/2020/242** dated **09.12.2020**, of Securities and Exchange Board of India, ('SEBI'):

It was decided that:

E-voting facility provided by listed entities:

- Statutorily, listed entities are required to provide e-voting facility to its shareholders. To increase the participation of voting by non-institutional shareholders and the efficiency of voting process, a single login e-voting for all demat account holders has now been enabled, wherein, such holders can cast their vote through demat account. The need to register multiple times on ESP (e-voting service provider) for casting the vote has been done away with. Physical shareholders can continue to avail the e-voting facility through ESPs.
- Such scheme would be implemented in a phased manner as follows:
 - Phase-1 has to be implemented within 6 months of date of the circular.
 - Phase-2 has to be implemented within 12 months from the completion of the process in phase-1.

➤ **Vide Circular No. "SEBI/HO/MIRSD/CIR/P/2020/255"** dated **31.12.2020**, of Securities and Exchange Board of India, ('SEBI'):

It was notified that:

Relaxation in timelines for compliance with regulatory requirements:

- Keeping in view the prevailing Covid-19 situation, for the trading members/ clearing members, the extension in timelines for compliance with the regulatory requirements were provided as follows:

Compliance requirements for which timelines are extended	Extended timeline/ period of exclusion
Maintaining call recordings of orders/ instructions received from clients	February 28, 2021
KYC application form and supporting documents of the clients to be uploaded on system of KRA within 10 working days	Period of exclusion shall be from January 01, 2021 till February 28, 2021 A 15 day time period after February 28, 2021, is allowed to clear the backlog

- The last date directed by of Stock Exchanges/ Clearing Corporations for their members, to clear any backlog for uploading the KYC application form and supporting documents of their clients on system of KRA, is 31st January, 2021.

Real Estate Brief

➤ **Circular issued by Goa Real Estate Regulatory Authority notifying documents and information required for registration of real estate projects regarding sketch plans for phase wise or part development**

- The Goa Real Estate Regulatory Authority ("GoaRERA") vide its circular dated 10.12.2020 bearing no. F.no:3/RERA/Off.Matters/2019/627, withdrew its Circular dated 27.01.2020.
- Further, GoaRERA provided that as per Section 3(1) of the Real Estate (Regulation and Development) Act, 2016 ("the Act"), prior registration for each phase of the real estate project is required to be obtained with the GoaRERA, prior to advertising, marketing, booking, sale or offer for sale, where the area of the land proposed to be developed exceed 500 (five hundred) square meters or the number of apartments proposed to be developed exceeds 8 (eight) inclusive by phases. It is further clarified that every phase is considered a standalone real estate project and the promoter is required to obtain registration under the Act for each phase separately. Section 4 of the Act further provides that the promoters are required to make an application to GoaRERA for registration of real estate project enclosing all relevant documents in such form, manner, time and along with the fee as specified by GoaRERA.

- In compliance of the abovementioned provisions of the Act, with respect to the real estate projects wherein single composite approval for development of Plot is obtained, GoaRERA further provided that where the developer/promoter desires to develop the project in a phase wise manner for which a single composite approval has been obtained, the developer has to indicate phase wise development of plot, giving all the phases and areas in square meters and details along with a rough sketch plan which has the demarcation of all phases, the areas of all phases in square meters, duly signed by the promoter/ applicant.
 - Further, the said rough sketch plan should also provide for the (i) demarcation of all phases; (ii) areas (in square meters) of all phases; (iii) signature of applicant/ promoter.
- ⇒ **Notification issued by Karnataka Real Estate Regulatory Authority (“K-RERA”) for conducting enquiry proceedings with respect to the unregistered projects**
- The K-RERA issued the notification No:K-RERA/US/CR/37/2020-21(P) dated 16.12.2010, as per the proceedings of the authority dated 14.12.2020, considering the high amount of complaints pending, the K-RERA decided to delegate the powers under section 81 of the Act to the secretary, K-RERA to conduct enquiry proceedings for unregistered projects.
 - Consequently, the steps to be followed by the secretary are to (i). issue the complaints; (ii). grant exemption from registration by issuing a speaking order on scrutiny of documents filed by eligible promoters; (iii). projects requiring registration after segregation may be sent to K-RERA for further action; (iv). complaints seeking individual relief should be sent to adjudicating officers; (v). complaints of common nature should be referred to K-RERA and (v). after the decision with respect to registration of a project is taken, if both common and specific reliefs are claimed, the complaint shall be marked to both the adjudicating officer or the K-RERA to take necessary actions.
- ⇒ **Public Notice issued by Kerala Real Estate Regulatory Authority (“KeralaRERA”) to the promoters of the ongoing Real Estate Projects regarding penalty for delayed submission of application for registration of on-going projects**
- The KeralaRERA issued a public notice dated 17.12.2020 with respect to registration of the on-going projects along with a fixed penalty.
 - Previously, the KeralaRERA vide its Order dated 30.10.2020 had fixed the penalty for delayed submission of application for registration of on-going real estate projects as per which the promoters of on-going projects can submit the application for registration upto 31.12.2020 along with the penalty of 40% (forty percent) of the application fee as provided under Rule 3(4) of Kerala Real Estate (Regulation and Development), Rules, 2017.
 - In case the application is received after 31.12.2020 then penalty shall be determined by the KeralaRERA on case to case basis after hearing the promoter. In such cases, the penalty may extend to 10% (ten percent) of the estimated cost of the project, as laid down under Section 59(2) of the Act.
- ⇒ **Order issued by the Rajasthan Real Estate Regulatory Authority (“R-RERA”) regarding applicable fee and extension for registration of real estate projects**
- R-RERA, by virtue of its powers conferred under Section 37 of the Act and Rule 23(3) of the Rajasthan Real Estate (Regulation and Development), Rules, 2017, issued Order dated 17.12.2020 bearing Serial No. F4 RJ/RERA/2017/ Part/D-2052, providing that:
 - The Order No. 1429 (Special Campaign for Delayed Applications for Extension) dated 25.08.2020, was passed by R-RERA, by virtue of which delayed extension of registration of projects for which the concessional rates were implemented of applications were initially valid up to 31.12.2020. However, the same has now been extended up to 31.03.2021, by virtue of the said order dated 17.12.2020.
 - Further, as per the orders dated 16.08.2019, 10.08.2020 and 25.08.2020, it was provided that for the cases for which the project has been completed and the completion certificate is received, the completion date for the same shall be determined at the time of registration of the finish date, of only 4 (four) months or less extension of registration in such cases and the fee shall be as per the following:
 - The extension fee for the same shall be 50% (fifty percent) of the registration fee.
 - However, in cases of delay, as penalty, as on 31.03.2021, 50% (fifty percent) of the registration fee shall be payable. After 31.03.2021, the normal registration fee shall be applicable.

➤ Notification issued by K-RERA for further extension by 3 (three) months for completion of Real Estate projects in view of prevailing COVID-19 situation

- The K-RERA issued a notification No:RERA/SEC/CR-04/2019-20 dated 18.12.2020 where extension of 3 (three) months for completion of real estate projects in view of prevailing COVID-19 situation was given.
- With reference to proceedings of K-RERA dated 03.03.2020 3 (three) months extension was given to the period of validity for registration of all K-RERA registered projects where completion (and revised and extended) date, expiring on or after 15.03.2020.
- With reference to circular bearing no. K-RERA/Sec. CR.04/2019-2020 dated 04.04.2020, the period of validity for all K-RERA registered projects was extended by 3 (three) months.
- With reference to circular bearing no. K-RERA/Secy/04/2019-20 dated 10.05.2020, all K-RERA projects were granted an extension of period of validity of registration by 6 (six) months by invoking "force majeure clause" where completion and revised completion or extended completion date expires on or after 15.03.2020.
- With reference to advisory bearing no. 0-17024/230/2018-housing-UDIEFS-9056405 dated 13-5-2020 by Government of India and No: K-14011/12/2020 AMRUT -II- A, dated 28.05.2020 by the Ministry of Housing and Urban Affairs along with the letter bearing no. PDS 19 HDD 2020 dated 25.09.2020 issued by chief secretary to Government, the K-RERA has extended the validity of registered projects for a period of another 3 (three) months by invoking "force majeure" clause where completion and revised completion or extended completion date expires on or after 15.03.2020.s

➤ Notification issued by the Uttar Pradesh Real Estate Regulatory Authority notifying the Real Estate Project (Maintenance and Operation of Separate Bank Account) Revised Directions, 2020

- Uttar Pradesh RERA ("UPRERA") vide its Notification bearing no. 10460/Separate Account/F&A/2020-21 dated 24.12.2020, issued revised directions being, the Real Estate Project (Maintenance and Operation of Separate Bank Account) Revised Directions, 2020 ("Revised Directions, 2020") passed under Section 34(f) and (g) of the Act.

- **Important Definitions:** The Revised Directions, 2020 removed the definition of no lien account and added the following definitions:

- 'Separate Bank Account' shall mean the separate account to be maintained by the promoter in a scheduled bank as per Section 4(2)(l)(D) of the Act, to cover cost of construction and land cost of the project;
- 'Collection Account' shall mean an account to be maintained by the promoter for receiving all the collections, including GST, from the allottees from time to time;
- 'Transaction Account' shall mean an account of the project to be maintained by the promoter for transferring up to 30 % (thirty percent) of the total collections received in the Collection Account of the project;
- 'Ongoing Projects' means the projects ongoing on the date of commencement of the Act for which completion certificate had not been issued before 01.05.2017.

- **Opening of the Account:** The promoter is required to open 3 (three) bank accounts, namely "Separate Account of the Project", "Collection Account of the Project" and "Transaction Account of the Project" for real estate project before applying for its registration with UPRERA. The promoter shall submit the details of all 3 (three) accounts with the application for the registration of the project.

A. Collection Account of the Project:

- The said Collection Account of the Project is required to be opened by the promoter with the scheduled bank and the same shall have the name of the project along with the name of the separate bank account holder;
- Further, the promoter shall give instructions the bank for auto- transfer of at least 70% (seventy percent) of the amount excluding GST, received from allottees in Collection Account to the Separate Account of the project and not more than 30% (thirty percent) of the amount collected to the Transaction Account of the Project.

B. Separate Account of the Project:

- i. The promoter is required to maintain this account separately for each of the projects.
- ii. The said Separate Account of the Project is required to be opened by the promoter with the scheduled bank and the same shall have the name of the project along with the name of the separate bank account holder.
- iii. The 70% (seventy percent) of the amounts collected from the allottees of the project shall be deposited in this account and shall be maintained from inception till the ratio is met. Further, the difference of amount collected and the amount spent on construction and land cost, shall be deposited in this account, even if it implies depositing more than 70% (seventy percent) of the amount collected from the allottees.
- iv. All secured and unsecured loans shall also be deposited in this account. Further, no withdrawals from this account shall be permissible without the 3 (three) certificates as provided under Section 4(2)(I)(D) of the Act.
- v. Rule 22(4) of the Uttar Pradesh Real Estate (Regulation and Development) Rules, 2017, states that any payment of amounts imposed as penalty, interest or compensation that is paid or payable by the promoter shall not be withdrawn from the accounts maintained under Section 4(2)(I)(D) of the Act.
- vi. The promoter can pay 70% (seventy percent) of the principal amount to be refunded to allottees subject to the condition that it has deposited or utilized not less than 70% (seventy percent) of all the money, including the interest collected from the allottees, for the construction and payment of cost of land of the project.
- vii. Further, in case of cancellation of an allotment, on account of the persistent of default by the allottee, only 70% (seventy percent) of the principal amount payable to the allottee can be paid from this account.
- viii. The promoter can also utilize the money from this for repayment of amount interest payable on account of the project finance at the same rate of interest with the bank or the FI or the NBFC is charging. The revised directions also provide for further conditions that are to be complied with, in this regard.

C. Transaction Account of the Project:

- i. The promoter is required to maintain this account separately for each of the projects.
 - ii. The said Transaction Account of the Project shall have the name of the project along with the name of the separate bank account holder.
 - iii. Further, not more than 30% (thirty percent) of the total amount received from allottees of the project, excluding GST, can be deposited in this account.
 - iv. Further, the expenditures like refunds to the allottees can also be met from this account and all payments on account of the penalties, interest and compensation, etc., shall be met from this account only or from other funds of the promoter.
 - v. The promoter shall submit the copies of the passbook/ latest bank statements of the proposed accounts of the project along with an affidavit in form RA-1 along with the application for registration of the project. Further, the promoter shall also submit necessary contractual and legal arrangements for operating the accounts if there are multiple promoters.
 - vi. If completion certificate of a project has not been received, the promoter is required to disclose all three (3) accounts of the project along with an affidavit in form RA-2 on the UPRERA website, along with the latest copies of passbook/statement of bank along and the copies of Form REG- 1, REG- 2 and REG- 3 by 31.03.2021.
 - vii. The promoter shall not be able to change the separate account of the project already declared on the UPRERA website using this facility.
- **Withdrawals from the Separate Account of the Project:**
 - i. The promoter shall withdraw the amounts from the separate bank account only to cover the cost of the project in proportion to the percentage of completion of the project.
 - ii. The said amounts shall be withdrawn only after it is certified by an architect, engineer and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project. Further, the promoter is

not advised to use the separate account for day to day transactions.

- iii. As per the provisions of Rule 5(1) and Rule 5(2) of the Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016 and Section 4(2)(l)(D) of the Act, (i) the land cost shall include outright purchase, lease charges incurred to obtain approval of the competent authority; (ii) construction cost shall include the expenses incurred towards the on-site expenditure for the physical development of the project.
- iv. For the purposes of withdrawal of the amounts, the promoter shall present to the bank certificates from the architect, engineer and chartered accountant in for REG- 1, REG-2, and REG-3 as under Regulation 3 of the Uttar Pradesh Real Estate Regulatory Authority (General) Regulations, 2019, where the chartered accountant shall be an entity other than the statutory auditor of the promoter.
- v. The UPRERA may also permit the promoter to withdraw the balance amount available in 'Separate Account of the Project' after completion of the project and fulfilment of conditions under Section 11 of the Act.

• Reporting to UPRERA

- i. The promoter shall upload the 3 (three) certificates issued by engineer, chartered accountant and architect submitted to the bank on the website of UPRERA while filing the quarterly progress report of the project.
- ii. 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 UPRERA, 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.
- iii. 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 UPRERA in addition of taking penal actions as contemplated in the 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 dis-memberment.

- iv. The promoter shall submit the details of any project finance availed at the end of every quarter using the online facility on the website of UPRERA.

• Changing of Bank Accounts of the project:

- i. The Authority may consider a change in the bank accounts of the project under the following conditions:
 - a. The promoter has not declared the separate account of the project at the time of the registration of the project with the UPRERA;
 - b. The bank account declared on the website of the UPRERA is common to more than one project of the promoter;
 - c. The bank account declared on the website of the UPRERA is a general collection account of the promoter and not a separate account of the project;
 - d. 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;
 - e. That the RBI has placed restriction on the operation of the bank account at a particular bank.
- ii. Further, the promoter may submit the application for change of bank accounts of the project in the manner as provided in the Revised Directions, 2020 along with the specified documents.
- iii. The application for change in bank accounts shall be submitted in Form RA3 along with the bank account statements of the current account reflecting the closing balance and account details on the date of application.

- iv. Further, subsequent to the grant of approval by the secretary, the promoter shall close the existing account and transfer funds therein to the new account. In addition to the same, the promoter shall also submit an affidavit with the UPRERA IN Form RA4, along with the bank statements of new account (reflecting opening balance and proof of closure of existing account) within 15 (fifteen) days from such grant of approval by the secretary.
- **Powers of UPRERA on Separate Account of the Project:**
 - i. The UPRERA, upon revocation of the registration of the project, shall direct the bank holding the project bank account as required under Section 4(2)(l)(D) of the Act to freeze the accounts and take necessary actions including consequent de-freezing of the said accounts 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 Act.
 - ii. The UPRERA, 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 and 37 of the Act read with Rule 19(o) of Uttar Pradesh Real Estate (Regulation and Development) 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 UPRERA.
 - iii. 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 UPRERA.
 - **Closure of the Separate Account on Completion of the Project:**
 - i. As per the Revised Directions, 2020, for the purposes of closure of the separate account on completion of the project, the promoter shall apply online seeking permission for the same after receiving the completion certificate from the competent authority along with the copy of

architect certificate in Form RA5, Final Form REG-3 that is duly certified by the chartered accountant and an affidavit in form RA6 certified by the signatory of the promoter that it has paid all outgoings as provided under Section 11(4)(g) of the Act.

- ii. Upon fulfillment of the above, UPRERA will grant permission to the promoter to close the account of the project and withdraw any balance amount. However, the promoter shall not be absolved of any undischarged responsibilities that were not disclosed while closure of the separate account of the project.
- iii. The Real Estate Project (Maintenance Of Separate Bank Account) Directions, 2020 issued vide No. 2753A/Separate Acctt-1/Finance/2020-21 dated 05.06.2020 have been superseded by the Revised Directions, 2020.

➤ **Order issued by Gujarat Real Estate Regulatory Authority for extension of due date for submission of form- 5 for FY 2019-20**

- The Guj- RERA vide its order, GujRERA/ Order- 44 dated 24.12.2020 extended the date for submission of Form- 5 for FY 2019-20, which was earlier due on 31.12.2020 and the same has now been extended to 31.01.2021.

➤ **Notice issued by the Maharashtra Real Estate Regulatory Authority for continuation of online services and operations**

- In lieu of the reference orders being (i). Govt. of Maharashtra Order: DMU/2020/CR.92/DisM-1 dated 29.12.2020; and (ii). Notice No. MahaRERA/Admn/Notice/2020 dated 30.11.2020, the Maharashtra Real Estate Regulatory Authority ("MahaRERA") vide its notice dated 30.12.2020 bearing No. MahaRERA/Adm/Notice/2020, further issued that MahaRERA shall continue its operations and online delivery of all its services.

Litigation Brief

➤ **Mere refund of consideration together with interest would not disentitle the flat purchasers from claiming compensation for delay.**

THE MATTER OF: DLF Home Developers Ltd. and Another vs. Capital Greens Flat Buyers Association (Decided by Hon'ble Supreme Court of India on 14.12.2020)

Issues:

Whether an offer of a refund of consideration together with interest, disentitle the Flat Buyers from claiming compensation for delay in handing over possession of the Flat?

Facts:

1. There was a substantial delay on the part of the Developer in handing over the possession of the Apartments which were contracted to be sold. Several Complaints were instituted, inter alia, by an association representing flat purchasers, called the Capital Greens Flat Buyers Association and by individual flat purchasers against the Appellant herein. A claim for compensation for delay in handing over the possession of the flats was made.
2. The Appellants in their defense to the complaints inter alia contended that they were prevented from achieving timely completion of their contractual obligations as a result of force majeure conditions. The National Consumer Dispute Redressal Commission ("NCDRC"), after detailed evaluation rejected the force majeure defense of the Applicant and allowed the Complaints. The NCDRC ordered the Developer to pay compensation in the form of simple interest @7% per annum from the expected date of delivery till the date on which the possession was actually offered to the Allottees.
3. Aggrieved by the judgement of the NCDRC, the present appeal was filed before the Hon'ble Supreme Court.

Court's Observations:

- The Counsel for Appellants submitted that the force majeure conditions at the site occasioned the delay. In order to establish the bona fides of the Developer in the present case, it was submitted that exit offers were given to the flat buyers on two occasions when the developer became aware of the fact that there was a delay beyond the contractual period and the purchasers were offered refunds of the consideration together with interest. It was further submitted that the flat buyer agreements provide compensation of Rs.10 per square foot per month towards compensation. Hence, apart from the force majeure defense, the award of compensation at the rate of 7% on account of the delay is erroneous.
- The Counsel on behalf of the Respondent submitted that the NCDRC has carefully evaluated the grounds set up in support of the force majeure defense, hence there

is no need for this Court to interfere with the findings borne out from the evidentiary record. On the aspect of compensation for delay, the Counsel for Respondent submitted that the tribunal took due notice of the fact that the developer had offered exit options to the flat purchasers, and that it was justified in coming to the conclusion that the offer of a refund of consideration together with interest did not sub-serve the needs of the flat buyers.

- The Court observed that there is no substance in the force majeure defense of the Appellant and upheld the view taken by the NCDRC. Relying on the judgement of this Hon'ble Court in Wing Commander Arifur Rahman Khan and Aleya Sultana and Others vs. DLF Southern Homes Private Limited, the Court observed that the fact that the developer offered an exit option with interest at 9% would not disentitle the flat purchasers from claiming compensation. The Court noted that mere refund of consideration together with interest would not provide a just recompense to a genuine flat buyer, who desires possession and remains committed to the project. It was held that the flat buyers had to suffer on account of a substantial delay on the part of the Appellants. In such a situation, they cannot be constrained to the compensation of Rs.10 per square foot provided in the agreement. Having regard the facts, the court was of the view that the compensation on account of delay should be brought down from 7% to 6%.

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