

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

Uttar Pradesh Real Estate Regulation Authority ("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 Real Estate (Regulation And Development) Act, 2016 ("Act"). This alert briefly captures the revised policy measures undertaken by UPRERA, particularly, in relation to the maintenance and operation of the bank accounts.

### ❑ Important Definitions:

- ≡ 'Separate Bank Account' shall mean the separate account to be maintained by the promoter in a scheduled bank as per Section 4(2)(I)(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.
- ≡ The procedure and functioning of the said 3 (three) accounts of the project are briefly captured hereinbelow:
  - **Collection Account of the Project:**
    - i. 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.
    - ii. 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.

- **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, 2020 also provide for further conditions that are to be complied with, in this regard.

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- **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:**

- ≡ 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.
- ≡ 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.
- ≡ 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)(I)(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.

- ≡ 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.
- ≡ 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:**

- ≡ 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.
- ≡ 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.
- ≡ 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.
- ≡ 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.

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**❑ Changing of Bank Accounts of the Project:**

- ≡ The Authority may consider a change in the bank accounts of the project under the following conditions:
  - i. The promoter has not declared the separate account of the project at the time of the registration of the project with the UPRERA;
  - ii. The bank account declared on the website of the UPRERA is common to more than one project of the promoter;
  - iii. 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;
  - iv. 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;
  - v. That the RBI has placed restriction on the operation of the bank account at a particular bank.
- ≡ 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.
- ≡ 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.
- ≡ 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:**

- ≡ 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.
- ≡ 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.

- ≡ 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:**

- ≡ 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.
- ≡ 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.
- ≡ 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.

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