UPDATES

MahaRERA issues directions for maintaining separate bank accounts for real estate projects

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This update covers:

1 Introduction

An update on the Maharashtra Real Estate Regulatory Authority's recent directions, which will apply to all transactions relating to development, financing, project transfers, or variations in project bank accounts for projects registered with it.

On 27 June 2024, the Maharashtra Real Estate Regulatory Authority (**MahaRERA**) issued a detailed set of directions on the maintenance and operation of separate bank accounts for real estate projects registered with MahaRERA (**Project**). Effective from 1 July 2024, these directions aim to enhance transparency, accountability, and financial discipline of the promoters, ensure proper utilisation of Project funds and protect homebuyers' interests in respect of the Projects.

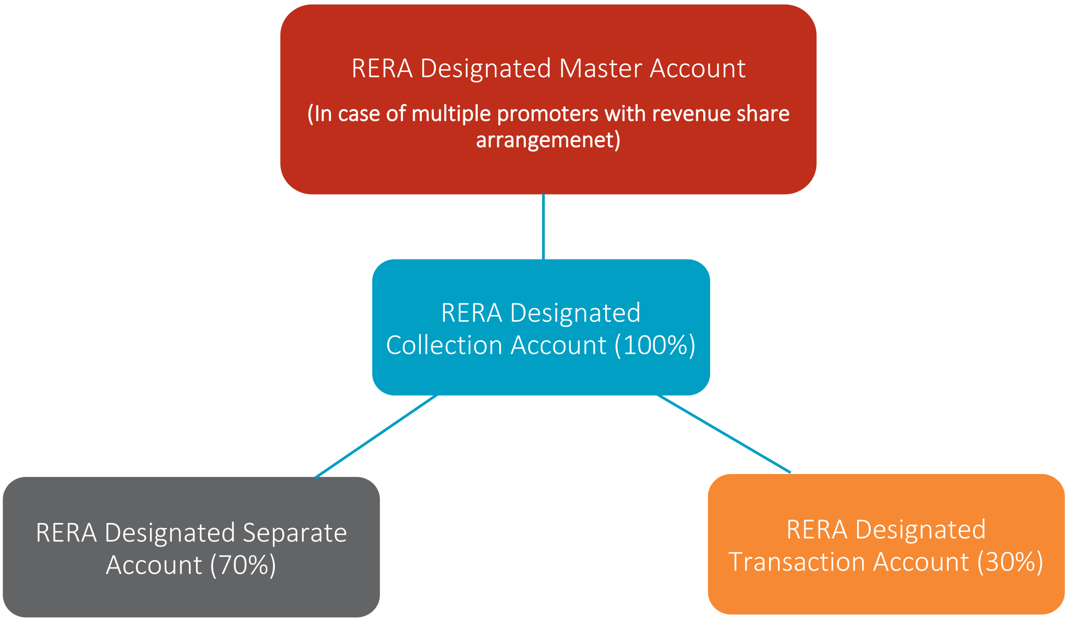
The directions mandate every promoter of the Projects to open the following three bank accounts in a single scheduled bank for depositing monies received from the allottees:

a. Real Estate Regulatory Authority (**RERA**) Designated Collection Bank Account (100% of the amount realised from the allottees) (**Collection Account**);

b. RERA Designated Separate Bank Account (70% of such realised amounts) (**Separate Account**); and

c. RERA Designated Transaction Bank Account (30% of such realised amounts) (**Transaction Account**).

Where there are multiple promoters with a revenue share arrangement, the designated promoter (as agreed under separate contractual or legal arrangements) must open a RERA Designated Master Bank Account (**Master Account**) to collect monies from the allottees, which would then be transferred to the Collection Accounts of each promoter (through auto-sweep facility) as per their respective shares in the revenue, and further bifurcated into their respective Separate Account (70%) and Transaction Account (30%). Accordingly, in the case of multiple promoters with revenue share arrangements, multiple layers of bank accounts will have to be opened, operated and maintained by each promoter. The proposed mechanism for all Project bank accounts in such instances will be as below.



The directions require the details of the Collection Account to be disclosed in the allotment letter and agreement for sale with the existing and prospective allottees. Alternatively, in case of multiple promoters having revenue share arrangement, the details of the Master Account must be mentioned/disclosed to the existing and prospective allottees, as above.

For Projects being registered after 1 July 2024, all Project bank accounts must be opened before applying for registration with MahaRERA.

2 Obligations of the promoter

The directions also outline certain obligations for the promoters, as discussed below.

2.1 Monies to be deposited

The directions stipulate that the entire amount accepted from allottees (excluding indirect tax, Goods and Services Tax, Value Added Tax, stamp duty, registration charges, etc.) and pass-through charges, if any, must be deposited in the Master Account or the Collection Account, as applicable.

2.2 Mortgage disclosure

The promoter must disclose any existing or proposed finance, secured and unsecured, obtained for the Project by mortgaging the land or building/units or both and servicing interest from the Separate Account.

In this regard, among other things, the factual details of the lender, sanctioned amount, disbursed amount, outstanding amount, mortgage details (as applicable), a declaration from the chartered accountant certifying that the loan amount is utilised for the Project only as well as supporting report from the Central Registry of Securitisation Asset Reconstruction and Security Interest for secured loans (as applicable) must be provided.

2.3 Deposit of secured and unsecured loan amounts

All monies received as loans, whether secured or unsecured, may at the option of the promoter be deposited in the Separate Account or any other bank account. Any payments towards servicing the loan can be withdrawn from the Separate Account, only if such withdrawal is supported with a certification by the chartered accountant.

2.4 Transfer or change of bank accounts

The Project bank accounts cannot be transferred or changed from the scheduled bank or branch to any other bank or branch, without the prior written approval of MahaRERA.

2.5 No lien on the accounts

The Master Account, Collection Account and Separate Account are required to be free from all encumbrances, lien, loan, and third-party control (i.e., lender, bank and financial institution) and must not be an escrow account. The directions also restrict these accounts from being attached by any governmental authority/body, unless it is directed or ordered by MahaRERA.

2.6 End-use restriction

In case of cancellation of allotment, only a maximum of 70% of the amount realised from the allottee can be withdrawn/refunded from the Separate Account to such allottee.

2.7 Payment exclusions of Separate Account

The directions clarify that the following amounts must not be treated as a '*project cost*':

a. interest or compensation payable to allottees; and

b. penalty imposed by MahaRERA.

Accordingly, such amounts cannot be withdrawn from the Separate Account. However, these may be withdrawn from the Transaction Account.

2.8 Disclosure on web portal

Upon opening of the Project bank accounts, banks are required to issue a letter in the prescribed format (Format B) to the promoter with details of accounts and standing advice received from the promoter. The promoter must upload the same on its web portal, and the same must be visible to MahaRERA.

2.9 Closure of accounts

The Project bank accounts can only be closed upon completion of the Project and upon submission of the occupancy certificate or completion certificate and architect's certificate (in Form 4) to MahaRERA.

Failure of the promoters to comply with the directions will be punishable with the penalties provided under Sections 60 and 63 of the Real Estate (Regulation and Development) Act, 2016.

3 Obligations of the banks

The key obligations placed by the directions on banks are as under.

a. Notify all promoters to open and maintain the Project bank accounts for all Projects registered on or after 1 July 2024 in accordance with the directions. The names of each Project bank account must be as per the prescribed nomenclature.

b. Ensure that no debit or withdrawal by way of cheque, debit card, credit card, internet banking facility, demand draft, bank guarantee or any other method is permitted from the Master Account and/or the Collection Account, except through auto-sweep facility for the following transfers:

   i. amount deposited in the Master Account to the Collection Accounts; and

   ii. from the Collection Accounts:

      - minimum 70% of the amount collected from allottees to the Separate Account; and
      - maximum 30% of the amount collected from allottees to the Transaction Account.

c. Ensure that the Master Account, Collection Account and Separate Account are no lien accounts, and are not escrow accounts. Separately, these accounts must not be permitted to be attached by any Governmental authority or body, unless it is directed or ordered by MahaRERA.

d. Issue letters to promoters in prescribed forms upon opening of accounts.

e. Suspend the withdrawal or transfer of funds from the Project bank accounts upon lapse of registration (except in case of extension by MahaRERA), and immediately comply with MahaRERA's instruction to freeze or de-freeze any Project bank account.

4 Conclusion

All transactions relating to the development, financing, project transfers, or variations in the bank accounts for the Projects will have to be in compliance with these directions. This detailed mechanism is targeted to boost confidence of homebuyers/investors and other stakeholders in the real estate sector, prevent misappropriation of funds, ensure financial discipline of promoters, promote transparency in revenue and expenditure and attain uniformity in the manner of operation of Project bank accounts by promoters.