

**BEFORE THE MAHARASHTRA
REAL ESTATE REGULATORY AUTHORITY, MUMBAI**

Virtual Hearing held through video conference as per
MahaRERA Circular No.: 27/2020

REGULATORY CASE NO. 317 OF 2025

PROMOTER NAME VIJAY KAMAL PROPERTIES PRIVATE LIMITED

PROJECT NAME MERIDIAN COURT 1

MAHARERA PROJECT REGISTRATION NO. P51800007441

ORDER

(In penalty waiver application)

March 03, 2025

(Date of hearing -22.01.2025 matter reserved for order)

**Coram: Manoj Saunik, Chairperson, MahaRERA
Mahesh Pathak, Member 1, MahaRERA
Ravindra Deshpande, Member 2, MahaRERA**

Advocate Neha Dubey present for promoter.

1. The applicant is the promoter/developer within the meaning of Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016 ("Act") of Real Estate Regulatory Authority ("RERA") and had registered the project "MERIDIAN COURT 1" under section 5 of the said Act bearing MAHARERA Registration No. **P51800007441** (hereinafter referred to as the "Project") On the MahaRERA project webpage the promoter has mentioned the proposed date of completion as 31.12.2023, revised date of completion as 30.12.2024 and extended date of completion as 30.12.2025. Further, no occupancy certificate (OC) is uploaded on the webpage.
2. The promoter/applicant has filed a regulatory application in complaint no. CC006000000000422 on 18.12.2024 (hereinafter referred to as "application") seeking for waiver of penalty which was heard by this Authority on 22.01.2025 wherein the following roznama was recorded:

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"Advocate for the promoter submits that vide order dated 13.03.2018 passed by the Authority, the promoter was levied penalty of Rs. 5,000/- per day which accumulates to Rs.56,95,000/-. The advocate for the promoter submits that the promoter has executed cancellation deed dated 09.03.2021 with the complainants and have refunded the amounts to the complainants and the matter stands settled.

The advocate for the promoter now seeks an order from the Authority waiving the penalty of Rs. 56,95,000/- as the complaint is settled and cancellation deed is also executed. Further, she submits that the promoter has paid the penalty amount of Rs. 56,95,000/-.

In view of the above, the advocate is directed to file the evidence with respect to the penalty amount of Rs. 56,95,000/- being paid to the Authority within 7 days, subsequent to which the matter shall be reserved for orders."

3. Before moving ahead, the Authority notes the following dates and events:

SR. NOS.	DATE	EVENT
1.	21.09.2017	The original complainants/allottees namely Mr. Satish Buba Shetty & Mrs. Prema Satish Shetty are the purchasers in the project who had filed complaint bearing no. CC006000000000422 before the Authority.
2.	26.12.2017	B.D Kapadnis, Member and Adjudicating Officer, MahaRERA had passed final order in the complaint bearing no. CC006000000000422. The operative part of which is reproduced as under: "a. The respondents shall pay the complainants, the amount mentioned in Para 7 of this order with interest at the rate of Rs. 10.05% from their respective payments till their refund. b. The complainants can claim the refund of stamp duty. c. The respondents shall pay Rs. 20,000/- to the complainants towards the cost of complaint. d. The charge of the above amount shall be on flat no. 0203 situated in respondents' registered project Vuelta, the Era at Kandivali till the satisfaction of complainants' claim. e. On satisfaction of complainants' claim, they shall execute deed of cancelation of agreement for sale at respondents' cost."
3.	13.03.2018	The allottees filed non-compliance of the final order in the complaint CC006000000000422, wherein B.D Kapadnis, Member, MahaRERA has passed non-compliance. The operative part of which is reproduced as under: "Respondents shall pay Rs. 5000/- towards the penalty from 16.1.2018 for every day, during which the default to comply with the order dated 15.12.2017 continues, till the amount of penalty cumulatively extends upto 5% of the estimated cost of their real estate project registered with MahaRERA or until the compliance of the order, whichever is earlier. Respondents to deposit the amount of penalty accrued till this date, within 10 days and thereafter he shall go on paying it on or before 15th and last date of a month. He shall report on the compliance of the order passed on complainants' complaint.

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		<i>Secretary of the Authority shall monitor the matter and submit quarterly report to the undersigned."</i>
4.	19.05.2018	Aggrieved by the order dated 26.12.2017 and 13.03.2018 the applicant/promoter filed an appeal in the MahaREAT thereby challenging both the orders of the Authority. The relief sought in the appeal bearing no. AT00600000010334 is mentioned as below: <i>"To modify the impugned judgment and order dated 26.12.2017 and to set aside the order dated 13.03.2018."</i>
5.	20.08.2019	The allottees thereafter filed execution application No. 6/2019 in the appeal proceedings for enforcing the orders of the Authority. However, upon service of the execution application, the respondent settled the matter with the complainants and therefore, the parties filed a consent terms dated 20.08.2019 in the execution application No. 6/2019 and settled the matter amicably.
6.	09.03.2021	Subsequently, vide Deed of Cancellation duly registered before the Sub-Registrar of Assurances at Borivali-9 bearing document no. BRL9-3452-2021 the complainants have cancelled their agreement for sale in respect of their premises/flat in the project of respondent.
7.	19.03.2021	Resultantly, order was passed by the Maharashtra Real Estate Appellate Tribunal (MREAT) in execution application No. 6/2019. The order is reproduced as under: <i>"Learned counsel for Applicant submits that claim as per application has been satisfied and nothing remains to be realized. He therefore seeks permission to withdraw the execution application with liberty to approach the concerned authority for claiming stamp duty as per law. Execution application being withdrawn stands disposed of with liberty as above".</i>
8.	22.01.2025	The promoter had applied for extension of the project on 22.01.2025 and on 14.02.2025 the extension was granted by the Authority under section 7(3) as the promoter had obtained majority consents of the allottees.

4. The following are the reliefs sought by the applicant/promoter:

"(a) That the order dated 13.03.2018 directing the Respondent to pay Rs. 5,000/- toward the penalty from 16.1.2018 for every day, during which the default to comply with the order dated 15.12.2017 continues, till the amount of penalty cumulatively extends upto 5% of the estimated cost of their real estate project registered with the whichever is earlier, may please be modified accordingly:

(b) That, the amount of Rs. 56,95,000/- being the amount of per day penalty of Rs. 5,000/- as mentioned in order dated 13.03.2018, may please be waived off in the interest of justice, equity and good conscience;

(c) Any other and further order as this Hon'ble Authority may deem fit and proper"

5. The following are submissions of the applicant/promoter:

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- a. That though, the order dated 13.03.2018 was duly complied, however the fact could not be brought before this Hon'ble Authority at that time and therefore inadvertently an amount of Rs. 56,95,000/- being the amount of per day penalty of Rs. 5,000/- as mentioned in order dated 13.03.2018 is being shown in our MahaRERA portal.
- b. That, they have duly complied with the order of this Hon'ble Authority however, inadvertently they could not inform to this Hon'ble Authority and/or request for waiver of the above-mentioned penalty imposed upon them.
- c. That, as they have already complied with the order of this Hon'ble Authority, the imposition of penalty would be an injustice and not fair and reasonable. As such the penalty imposed vide order dated 13.03.2018 deserves to be waived off and the order dated 13.03.2018 deserves to be modified accordingly.

6. The following observations are noteworthy:

- a. That the respondent seeks for waiver of penalty of Rs. 56,95,000/- on the grounds that they have complied with the order.
- b. It is observed that the promoter has filed the regulatory application dated 18.12.2024 in the nature of a review of the non-compliance order dated 13.03.2018 under the regulation 36 of the RERA regulations, 2017 thereby seeking waiver of the per day penalty amount levied on the promoter for non-compliance of the original order of the Authority dated 26.12.2017.
- c. It is pertinent to note that this monetary administrative penalty being contingent in nature became payable and started running from 16.01.2018, which came to an end on 09.03.2021 i.e. on the satisfaction of the original order dated 26.12.2017 by way of settling the matter amicably with the allottees and subsequent to executing the cancellation deed. Thus, the contingent penalty for noncompliance of

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the order of the Authority was in existence from 16.01.2018 till 09.03.2021.

- d. That the promoter has failed to establish and satisfy the Authority as to which provision of the RERA Act provides for waiver of a legally enforceable penalty.
- e. Further it is observed that in the application the promoter has sought waiver of the penalty amount. However, during the hearing dated 22.01.2025 the advocate for the promoter submits that the promoter has paid the penalty amount of Rs. 56,95,000/-. The Authority directed the promoter to submit within 7 days, the evidence on record showing that the payment of penalty amount has been paid. However, it is observed that the promoter has not filed the same with the Authority till date.
- f. From the records available with the Authority it is observed that, the Authority enforced the total payable penalty online on 02.03.2021 and subsequent to which the applicant executed the cancellation deed and the allottees withdrew their execution application filed in appeal filed by the promoter, whereas the promoter has paid the penalty amount of Rs. 56,95,000/- only a day prior to the date of hearing i.e on 21.01.2025 and during the hearing the applicant has sought for the waiver of the penalty.

7. From the above observation the following issues are to be determined by the Authority:

A. *whether the present regulatory case filed in nature of review application is maintainable?*

B. *whether the promoter is entitled for waiver of penalty under the act?*

8. In order to answer the issue at para no. 7 (A), rule 36 of Maharashtra Real Estate Regulatory Authority (General) Regulations, 2017 (hereinafter referred to as the "rule") is noteworthy:

"Rule 36 - Review of decisions, directions, and orders:

(a) Any person aggrieved by a direction, decision or order of the Authority, from which

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(i) *no appeal has been preferred or*

(ii) *from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Authority.*

(b) *An application for such review shall be filed in the same manner as a complaint under these Regulations.*

(c) *The Authority shall for the purposes of any proceedings for review of its decisions, directions and orders be vested with the same powers as are vested in a civil court under the Code of Civil Procedure, 1908.*

(d) *When it appears to the Authority that there is no sufficient ground for review, the Authority shall reject such review application.*

(e) *When the Authority is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the decision or order, the review of which is applied for."*

9. According to rule 36, the following 6 (six) grounds are necessary to establish so as to decide a review application:

a. **First** - review is maintainable only when there is no appeal preferred/ filed thereby challenging the order of the Authority for which the review is sought. In the present case, the applicant/promoter had already filed an appeal on 19.05.2018 bearing no. AT006000000010334 in the MREAT aggrieved by the order dated 26.12.2017 and 13.03.2018 thereby challenging both the orders of the Authority. The relief sought in the appeal was "To modify the impugned judgment and order dated 26.12.2017 and to set aside the order dated 13.03.2018." Furthermore, the allottees filed an execution application No. 6/2019 in the appeal filed by the applicant/promoter, so as to executed the order dated 26.12.2017 of the Authority. However, the same came to be disposed off as withdrawn by the allottees vide an order dated 19.03.2021 on the ground of compromise between the parties. The MREAT order dated 19.03.2021 read as under:

"Learned counsel for Applicant submits that claim as per application has been satisfied and nothing remains to be realized. He therefore seeks permission to withdraw the execution application with liberty to approach the concerned authority for claiming stamp duty as per law.

Execution application being withdrawn stands disposed of with liberty as above."

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It is pertinent to note that, the execution application filed by the allottees is disposed as withdrawn, whereas the issue of alleged wrongful enforcement of penalty is yet to be determined by the MREAT. Further, the applicant for whatsoever reason best known to him did not pressed on the issue of waiver of penalty before the MREAT at the time of disposing the execution application, and as such, the primary ground for imposition of alleged wrongful penalty went unanswered. It is also to be noted that, the applicant has furnished only the MREAT order dated 19.03.2021 which is pertaining to disposing of execution application and has failed to furnish or provide to the Authority any other order of the MREAT pertaining to the disposal of appeal. Further, as observed from the MREAT records there is no other order passed by the MREAT in the appeal save and except the order dated 19.03.2021 whereby only the execution application came to be disposed off.

- b. **Second** - review applications can only be heard in cases where the order passed by the Authority is unappealable. In in the present case, the applicant/promoter has an option of appeal against the orders of the Authority. Further, in this case the appeal was already filed, and as such, even this ground for sustenance of review is vitiated.
- c. **Third** - review can be heard on discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced at the time when the direction, decision or order was passed. In the present case, the applicant/promoter has not brought on record any new important matter or evidence.
- d. **Fourth** - review can be entertained on account of some mistake or error apparent from the face of the record, which the applicant/promoter shall bring to the notice of the Authority. In the present case, the applicant/promoter has failed to demonstrate any mistake or error apparent from the face of the record of the order.

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- e. **Fifth** - for any other sufficient reasons. In the present case, the applicant has failed to satisfy this Authority any other sufficient reason so as to sustain the review.
- f. **Sixth** - and that all the grounds mentioned above while seeking review to be filed within a period of forty-five (45) days from the date of the final order. In the instant application, the order sought to be reviewed and modified is dated 13.03.2018, whereas the review is filed after delay of more than 6 (six) years. Further, nor have the applicant filed any application to condone the delay and neither have made any averment in the application or demonstrated a sufficient cause as to why this inordinate delay of more than 6 (six) years be condoned.
- g. It is to be noted that, on 02.03.2021 the penalty was enforced online which appeared on login of the applicant and the MahaRERA registration webpage of the promoter, whereas after the enforcement of the penalty online, the applicant promoter executed cancellation deed with the allottees on 09.03.2021 and thereafter the MREAT order of compromise between the parties came to be passed on 19.03.2021 in the appeal filed by the applicant. Thus, the applicant/promoter was well aware of the total penalty amount which was pending to be paid, and as such, should have agitated this issue before the MREAT at the time of passing the compromise order dated 19.03.2021. Assuming for whatsoever reason best known to the applicant he failed to press this issue before the MREAT, he was at liberty to file a review within 45 days from the date of the order of MREAT dated 19.03.2021, which the applicant/promoter has failed to do so.
- h. In light of the aforementioned observations, the issue at **para no. 7(A)** is answered in **negative** and the review filed by the applicant/promoter is **dismissed as not maintainable**.
10. With respect to the issue at para no. 7(B) pertaining to waiver or refund of penalty, it is imperative to refer to section 40 of the Act, which is reproduced hereunder for ease of reference:

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40. Recovery of interest or penalty or compensation and enforcement of order, etc.

(1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.

(2) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed.

Thus, section 40 of the Act provides for recovery and enforcement of penalty in case of failure to pay the same. However, the Act does not provide for waiver or refund of the penalty.

11. It is pertinent to note that the regulatory application in the nature of a review is filed seeking waiver of the penalty amount. However, the applicant paid the penalty amount one day prior to the hearing i.e. on 21.01.2025 and during the course of hearing informed the same to the Authority and pressed on passing appropriate orders on the application filed for waiver of the penalty. Hence, once the penalty is paid there arises no question of waiving the penalty as the application has rendered itself redundant and infructuous in nature, and with respect to the issue of refund, the applicant has sought waiver and not refund in the application. It is pertinent to note that, the applicant/promoter has also not amended the application. Thus, the issue of refund is also vitiated. Thus, the issue at **para no. 7(B)** is answered in **negative**.

12. Moreover, on the issue of refund of the penalty amount it is pertinent to note that the imposition of penalty acts a deterrent against the defaulter party and aids in setting a precedent for those who tries to disregard or flout the orders of

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the Authority and take the judicial mechanism for a ride. Thus, waiving or refunding such legally recoverable administrative penalty by exercising discretionary powers would amount to acting in excess of its jurisdiction, as the penalty once paid by the defaulter form a part and parcel of the state revenue.

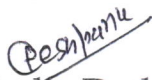
13. Therefore, in light of the aforementioned observations, the Authority concludes that the regulatory application filed in the nature of a review is liable to be dismissed on the preliminary ground of maintainability.

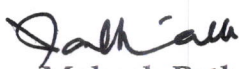
FINAL ORDER

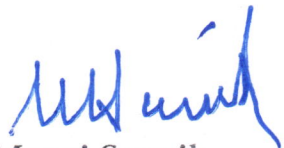
14. Taking into consideration the facts of the case, the material placed on record, the submissions of the parties and the observations mentioned hereinabove, the Authority passes the following order.

A. The regulatory application is dismissed as not maintainable for reasons as mentioned hereinabove.

B. No order as to cost.


Ravindra Deshpande
Member-2, MahaRERA


Mahesh Pathak
Member-1, MahaRERA


Manoj Saunik
Chairperson, MahaRERA