

Kavita S.J.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3565 OF 2025

Mayur L. Desai

Petitioner

Versus

State of Maharashtra & Anr.,

...Respondents

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Mr. Aseem Naphade a/w Ms. Chitrangada Singh & Mr. Ayush Yadav
i/b Clove Legal for the Petitioner.

Ms. Madhura Deshmukh, Addl. G.P. for Respondent No.1 – State.

Mr. A.K.Saxena for Respondent No.2 – MahaRERA.

CORAM : R.I. CHAGLA AND
FARHAN P. DUBASH, JJ.

DATED : 6th OCTOBER, 2025.

ORDER :

1. The Writ Petition had been disposed of by a Judgment passed by this Court dated 24th July, 2025. In Paragraph 31(ii) of the operative part of the said Judgment, MahaRERA was directed to consider revisiting Circular No.34A dated 8th April, 2025 and its Standard Operating Procedures (SOPs), particularly with respect to the mechanism for:

- (a) Urgent listing of matters;
- (b) Execution of non-compliance orders;
- (c) Mentioning of cases (physically or virtually); and
- (d) Pronouncement and publication of reserved orders.

2. Thereafter, a Circular had been issued by MahaRERA on 11th August, 2025. By a subsequent Order dated 4th September, 2025 passed by this Court, the said Circular was allowed to be withdrawn by the Counsel appearing for MahaRERA as the same was not in compliance with the aforementioned directions of this Court.

3. Subsequently, the Circular No.49/2025 dated 12th September, 2025 has been issued.

4. Mr. Naphade, learned Counsel appearing for the Petitioner has submitted that pursuant to the aforementioned direction, the mechanism for Clauses (a) and (c) have been complied with by MahaRERA. However, Clauses (b) and (d) had not been complied with.

5. Mr. Naphade has submitted that execution of non compliance orders is required to be in compliance with the provisions of the the Real Estate (Regulation and Development) Act, 2016

(“**RERA Act/the said Act**”). He has in particular placed reliance upon Section 40(2) of the said Act read with Rule 4 of the Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal etc.) Rules, 2017 (“**said Rules**”). Under Rule 4 it is provided that for the purpose of sub Section (2) of Section 40, every order passed by the concerned Adjudicating Officer, the Authority, or the Appellate Tribunal shall be enforced in the same manner as if it were a decree or order made by the principal civil court of original jurisdiction in a Suit. In the event, the said order is unable to be executed, the concerned Adjudicating Officer, the Authority, or the Appellate Tribunal shall send a copy of the said order to the principal civil court to execute the said order either within the local limits of its jurisdiction where the real estate project is located or the principal court of original jurisdiction within the local limits of whose jurisdiction the person against whom the order has been issued resides, carries on business, or personally works for gain along with a certificate stating that such an order has not been executed by it.

6. Mr. Naphade has referred to the said Circular dated 12th September, 2025 and he has submitted that the MahaRERA has failed

to comply with the aforementioned mechanism for Clause (b) of Paragraph 31(ii) of the operative part of the said Judgment.

7. Mr. Saxena, learned Counsel appearing for the MahaRERA has referred to Paragraph 2 of the said Circular dated 12th September, 2025 which provides that the present system of publishing a daily online cause list of complaints / non-compliance application, including pronouncement of orders by listing of the matters before the respective Bench of MahaRERA, shall be continued. He has submitted that this contemplates pronouncement of orders by listing of the matters before the respective Bench of the MahaRERA and thereafter, publishing *inter alia* the reserved orders in the online cause list of complaints / non-compliance applications. He has accordingly submitted that the mechanism for Clause (d) of Paragraph 31(ii) of the said Judgment has been complied with.

8. Having considered the submissions, in our view, although the mechanism for Clause (d) of Paragraph 31(ii) of the operative part of the said Judgment appears to have been complied with by MahaRERA, Clause (b) of Paragraph 31(ii) of the said Judgment has not been complied with.

9. We find merit in the submission of Mr. Naphade on behalf of the Petitioner that under the RERA Act, 2016 and in particular Section 40(2) read with Rule 4 of the said Rules, every order passed by MahaRERA shall be enforced by the concerned Adjudicating Officer, Authority or the Appellate Tribunal in the same manner as if it were decree or order made by the principal civil Court of original jurisdiction in a Suit. It is only in the event that the said order cannot be executed by the concerned Adjudicating Officer, Authority or the Appellate Tribunal, then, the subsequent part of Rule 4 i.e. of sending the said order to the principal court to execute such order will apply.

10. Section 40(2) of the said Act is required to be complied with by the concerned Adjudicating Officer, Authority or Appellate Tribunal in execution of non-compliance orders in the manner as prescribed in Rule 4. Thus, the execution of the said order is to be done in the manner as if it were decree or order made by the principal civil court of original jurisdiction in a Suit. Accordingly, the provisions of the CPC and in particular Order XXI Rule 41 would apply for execution of the orders. Thus, MahaRERA in execution of non-compliance of order is required to adopt the procedure in Order

XXI Rule 41 of the CPC. This contemplates passing of orders for disclosure of assets by the Respondents and non compliance thereof would attract the rigors of Order XXI Rule 41(3).

11. Having brought to the notice of Mr. Saxena, learned Counsel for MahaRERA that there is non provision of the mechanism for Clause (d) of Paragraph 31(ii) of the operative part of the said Judgment, he states that an appropriate Circular will be issued in compliance with the said Clause and has sought for time on that ground.

12. Accordingly, the disposed of Writ Petition shall be placed for further compliance on 10th November, 2025.

[FARHAN P. DUBASH, J.]

[R.I. CHAGLA, J.]