

Stamp duty Amnesty Scheme 2019



The Government of Maharashtra has introduced an amnesty scheme offering a substantial concession of 90% on the amount of penalty payable under the Maharashtra Stamp Act, 1958 on the deficit stamp duty in respect of certain types of instruments ("Amnesty Scheme")^[1]. The benefit offered

under this Amnesty Scheme is towards the amount of penalty payable on the deficit portion of the stamp duty and not on the deficit portion of the stamp duty itself.

It is imperative that an application under this Amnesty Scheme is made to the concerned authority on or before 1 September 2019 as the Amnesty Scheme is valid for only six months with effect from 2 March 2019.

Penalty provisions under the Maharashtra Stamp Act, 1958

Pay penalty at reduced rates

The Maharashtra Stamp Act, 1958 ("Stamp Act") provides for penalty at the rate of 2% of the deficient portion of the stamp duty for every month from the date of execution of such instrument subject to a maximum of 400% i.e. 4 times of the deficient portion of the stamp duty. As against such exorbitant rates of penalty, one can rectify the irregularity in certain types of instruments, which have been executed on or before 31 December 2018, under this Amnesty Scheme, by paying just 10% of the penalty amount leviable on the deficient portion of the stamp duty alongwith the payment of deficient portion of stamp duty.

No refund if penalty paid already

In cases where penalty on the deficient portion of the stamp duty has already been paid on such instruments prior to 2 March 2019, then this Amnesty Scheme does not contemplate a refund of such amount of penalty paid.

Applicability of this Amnesty Scheme

The Amnesty Scheme is applicable only to certain types of instruments executed on or before 31 December 2018.

Applicable to certain types of instruments

The Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 provides for the provision of deemed conveyance in cases where the developer fails to execute a conveyance in favour of a Society. However, at the time of making an application for deemed conveyance, duly stamped agreements of all flat purchasers (including the agreements of predecessors in title of a flat purchaser) are required to be submitted. If such agreements are not adequately stamped, then the same could pose as a hurdle in the process of deemed conveyance. Further, the skyline in Mumbai and rest of Maharashtra is changing. There are many redevelopment projects that are being implemented for redeveloping old buildings. If a tenant or a flat purchaser has not paid proper stamp duty on their agreements, the question of perfect title arises. In such times, the tenant or a flat owner is required to pay the deficit portion of the stamp duty along with the penalty as exorbitant as 400% of the deficit portion of the stamp duty.

In the above cases, one can now take the benefit of the Amnesty Scheme in respect of the nature of the instruments as mentioned in the Amnesty Scheme. However, the Amnesty Scheme is only applicable to residential tenanted property and residential units in a co-operative housing society which is eligible for deemed conveyance or whose deemed conveyance is pending. Moreover, it appears that the Amnesty Scheme is not applicable to inadequately stamped documents of residential unit holders in a co-operative housing society where the conveyance has already been executed in favour of such co-operative housing society. Also, agreements executed on a plain paper will not be considered.

The Amnesty Scheme also covers documents pertaining to conveyances of allotments or transfers / sales of residential or non-residential units of statutory developmental bodies such as SRA, MHADA and CIDCO. In such cases, even if the agreements are executed on a plain paper, the benefit of the Amnesty Scheme is not lost to the aggrieved parties.

Also, with respect to such instruments, the rate of proper stamp duty as payable thereon prior to 25 April 2012 shall be taken into consideration.

Instruments which are already under scrutiny of concerned authorities

Instruments which have either been submitted to a Collector for adjudication or which are referred to the Collector for determination of a true market value or which are impounded or in respect of which there is a notice issued or order passed by the Collector under Stamp Act and in respect of which an action under certain provisions of the Stamp Act, has already been initiated or where appeal or review application is pending for decision before any court, shall also be entitled to avail the benefits of this Amnesty Scheme. However, in case where appeal or review is pending for decision, the applicant is required to unconditionally withdraw the case and submit a declaration to that effect along with the application in the prescribed form.

Instruments already submitted in previous Amnesty Schemes

Instruments which were already submitted in the previous amnesty schemes^[2] but where stamp duty and penalty have not been paid as yet are also eligible for the reduction in penalty under the present Amnesty Scheme by making a fresh application in that behalf.

Procedure for claiming the benefit under this Amnesty Scheme

Whether a particular instrument relating to the abovementioned cases is eligible for taking benefit of this Amnesty Scheme or not, can be determined from the nature of the instrument and contents thereof.

The application for reduction in penalty should be filed either by a party to the instrument or his successor in title or power of attorney holder in a prescribed format along with original instrument, necessary evidence and self-attested copies of the supporting documents on or before 1 September 2019.

The deficit portion of the stamp duty along with concessional penalty under the Amnesty Scheme will be

required to be paid within 60 days from the date of receipt of the demand notice from the concerned Collector of Stamps, failing which the applicant shall not be entitled to the benefits under this Amnesty Scheme.

Conclusion

This Amnesty Scheme benefits all those applicants who have not paid adequate stamp duty in respect of certain types of instruments in the cases as referred to above.

Whether a particular instrument relating to the abovementioned cases is eligible for taking benefit of this Amnesty Scheme or not, can be determined from the nature of the instrument and contents thereof. Since this Amnesty Scheme is open for a very short time (only till 1 September 2019), it is recommended that appropriate and prompt steps are taken to avail the benefit of this Amnesty Scheme at the earliest, pay the deficit stamp duty along with a reduced rate of penalty and in turn perfect their title in respect of their immovable property.

Ketan Khare (Team Leader) and Nirali Shah (Associate)

Editor: Trupti Daphtary (Knowledge Management)

[1] Order bearing No. Mudrank-2018/943/C.R.No.88/M-1 of the Revenue and Forest Department is published in the official gazette of Government of Maharashtra on 2 March 2019.

[2] Prior to the present Amnesty Scheme of 2019, the Government of Maharashtra has from time to time notified Amnesty Schemes in the years 1994, 1997, 1998, 2004 and 2008 for reducing or remitting the amount of penalty chargeable in respect of the deficit portion of stamp duties.

DISCLAIMER

This newsletter is for informational purposes only, and not intended to be an advertisement or solicitation. This newsletter is not a substitute for professional advice. Hariani & Co. disclaim all responsibility and accept no liability for consequences of any person acting or refraining from acting on the basis of any information contained herein.

Copyright © : Hariani & Co. All rights reserved. Reproduction of this newsletter in whole or in part is allowed with proper reference to Hariani & Co.