

BEFORE THE REAL ESTATE REGULATORY AUTHORITY HIMACHAL PRADESH AT SHIMLA

EXECUTION PETITION NO.27/ 2024

IN

Complaint No.HIM/TP/HPRERA/Complaints/2018/VOL-I/2018

In the matter of:-

- 1 Smt. Vandana Tuteja wife of Sh. Vijay Pratap Tuteja, Resident of House no. 417/7, Partap Nagar Gurgaon-12200,
- 2 Sh. Vijay Kumar Tuteja son of late Sh. Tagga Ram, Resident of House no. 417/7, Partap Nagar Gurgaon-122001

..... Decree Holders

Versus

- 1 M/s Unimaxx Builders and Developers Pvt. Ltd. office at B-6/4 Second Floor, Commercial Complex Safdarjung Enclave, New Delhi-110029 through its Directors Mohit Khanna Son of Late Sh. Satish Khanna, Resident of C-2/129, west Enclave, Pritampura Delhi-34.
- 2 M/s Unimaxx Builders and Developers Pvt. Ltd. office at B-6/4 Second Floor, Commercial Complex Safdarjung Enclave, New Delhi-110029 through its Directors Mohit Khanna Son of Late Sh. Satish Khanna, Resident of C-2/129, west Enclave, Pritampura Delhi-34.
- 3 M/s Pacific Construction & Management, office at D-64, First Floor, Vikas Marag Shakarpur Delhi through Vikas Madan (Through its Partner).
- 4 Sh. Bharat Vaidya Son of Sh. Arun Kumar Vaidya Prop. Of project Himalayan Habitat, Resident of VPO Bajora Tehsil Bhunter District Kullu H.P.

..... Judgment Debtor(s)

Present: Sh. Naresh Kumar Sharma, Ld. Counsel for the decree holders
Smt. Gurjeet Kaur Ld. Counsel for JD No.1 & 2
None for JD No.3
Sh. Sameer Thakur, Ld. Counsel for JD No.4

Date of Institution: 03.06.2024

Date of Decision: 22.12.2025

INTERIM ORDER
CORAM: CHAIRPERSON AND MEMBERS

1. **Brief Facts:** That, in pursuance to the order, passed by Town and Country Planning Department Himachal Pradesh dated 27.04.2019, vide which judgment debtors 1 and 2 i.e. M/S Unimexx Builders and Developers Private Limited were directed to refund the amount Rs. 6,00,000/- to the decree holders along with the interest accrued as per provision of section 18 of RERA Act read with rule 15 of HP RERA Rules, 2017 and further judgment debtors were also directed to deposit the post-dated cheque on or before 10.05.2019 with the designated officer RERA HP cum Director T & CP Department HP, the decree holders namely Smt. Vandana Tuteja and Sh. Vijay Kumar Tuteja has again invoked the jurisdiction of this Authority by way of this execution petition. As per the averments of the decree holders, judgment debtors have intentionally and deliberately failed to comply with the said order and as such they are liable to be dealt with as per the relevant provisions of law. It is further the submission of decree holders that due to act and conduct of judgment debtors, they are forced to pursue another round of litigation by instituting complaints under Section 138 of NI Act and moreover, CMPMO no. 256 of 2020, filed before Hon'ble High Court against the aforesaid order dated 27.04.2019 also stands dismissed/ disposed

of with the liberty to the judgment debtors to approach appropriate Appellate Tribunal. However, the judgment debtors have not preferred any appeal before Appellate Authority and as such: -

- i. judgment debtors be punished under section 40 of RERA Act, 2016.
- ii. The judgment debtor be directed to pay an amount of Rs. 7,04,358/- as calculated along with interest till 22.05.2024 with future interest from 23.05.2024 onwards till the realization of entire amount.
- iii. The JDs be also directed to furnish affidavit under Order 21 Rule 41(2) of CPC stating about the assets, they are possessing.
- iv. Attachment of immovable and movable properties of JDs No. 1 & 2 and in the event of non-payment of aforesaid amount, the JDs No. 1 & 2 be sent behind the bar for non-compliance of the order dated 27.04.2019.

2. OBJECTIONS ON BEHALF OF JDs 1 & 2: The judgment debtors, in rebuttal, submitted that:

- i. The project Ansal Meadows, Arun Hills was undertaken by M/s Unimex Builders and Developers Pvt. Ltd., arrayed as Respondents No. 1 and 2, and M/s Pacific Construction and Management along with the proprietor/landowner of the project, arrayed as Respondents No. 3 and 4. All the said persons were promoters of the project and were jointly associated with its development, sale, designation, and maintenance, and therefore have equal liabilities.
- ii. The Hon'ble High Court, in Wadhwa Group Housing Pvt. Ltd. v. Vijay Choksi & Ors. and Sanjay Dhillon & Anr. v. Sumit Khanna & Ors., has inter alia held that in a joint development project, even a promoter who has not directly received consideration from an allottee is jointly liable to refund the amount.
- iii. The project involved four developers, namely Sumit Khanna, Mohit Khanna, Vikas Madan, and Bharat Vaidya. Respondent No. 4, Bharat Vaidya, resident of Village and Post Office Bajaura, Tehsil Ghunter, District Kullu, Himachal Pradesh, is the landowner of the project and had executed a Power of Attorney in favour of Respondent No. 3, Vikas Madan, through M/s Pacific Construction and Management. Respondents No. 1 and 2 were not aware of the malicious intentions of Respondents No. 3 and 4.
- iv. The project was initially started in the year 2010. The project was primarily run by Respondent No. 3, Vikas Madan, being the GPA holder, and Respondent No. 4, Bharat Vaidya, being the landowner. Respondents No. 1 and 2, namely Sumit Khanna and Mohit Khanna, acted only as brokers in the project till the year 2016. In the year 2016, Respondents No. 1 and 2 purchased certain units from Respondents No. 3 and 4, including Vikas Madan and Pankaj Madan. These units were handed over to Respondents No. 1 and 2 free from construction liabilities, as is evident from the material available on record.
- v. The complainant, Vandana Tuteja, booked the unit during the period when Respondents No. 1 and 2 were merely brokers and were not owners or developers of the project. It is further submitted that Respondents No. 1 and 2 were demarcated or restricted from construction liability, as the project failed due to the malicious intentions of Respondents No. 3 and 4. In the year 2016, the project was again initiated with the association of all four developers, however, despite efforts made by Respondents No. 1 and 2 to proceed with construction, Respondent No. 3, the GPA holder, failed to carry out construction. Respondents No. 1 and 2 attempted to amicably resolve the dispute with Respondents No. 3 and 4. The advertisements, brochures, and promotional materials were initially issued by Respondents No. 3 and 4. Respondents No. 3 and 4 adopted unfair business practices which resulted in Respondents No. 1 and 2 being compelled by the Chairperson of RERA to refund the amount with interest under Section 31 of the Act, despite the fact that Respondents No. 1

and 2 were only brokers at the time of booking and that Respondents No. 3 and 4 had failed to hand over possession as per the Agreement for sale.

vi. The act of the court cannot be retrospective so as to affect the existing rights of Respondents No. 1 and 2. The malicious intentions of Respondents No. 3 and 4 deserve consideration, particularly in light of the orders passed in *Sanjay Dhingra & Anr. v. Sumit Khanna & Ors.* And *Kawarjeet v. Sumit Khanna*, wherein all members of a joint project were held responsible for refunding the amount to the allottee. Respondents No. 1 and 2 have already refunded the cheque amount pursuant to proceedings before the Hon'ble Court at Gurugram, and the said cheque forms part of the record.

vii. The rate of interest imposed by the Real Estate Regulatory Authority is excessive. Respondents No. 1 and 2 have already complied with the directions of the Hon'ble Court at Gurugram and paid the cheque amount to the allottee in accordance with law. It is further submitted that Respondents No. 3 and 4 are also liable to compensate Respondents No. 1 and 2, as the entire refund amount has been paid by Respondents No. 1 and 2 alone. Respondent No. 4, being the landowner who permitted development through Respondent No. 3, is equally liable to refund the amount to the allottee. All members of the project shared profits on a revenue-sharing basis and are therefore equally liable to bear losses and damages arising out of refund obligations. Statutory compliances, including procurement of occupancy certificate and RERA registration, were required to be obtained by Respondent No. 3, namely Vikas Madan and Pankaj Madan. Respondents No. 1 and 2 were not provided accurate or timely information by Respondents No. 3 and 4 to be conveyed to the allottee. It is further submitted that all promoters under the Act are vested with identical duties and responsibilities towards allottees. Respondents No. 3 and 4 neglected their statutory duty of refunding the amount, whereas Respondents No. 1 and 2 acted bona fide. Respondents No. 1 and 2 submit that the present submissions are made bona fide, as Respondents No. 3 and 4 acted with malice and some special motive and conspired against Respondents No. 1 and 2.

viii. The present application is not maintainable in law. The complainant has not approached this Hon'ble Authority with truthful disclosure, despite being aware of the collaboration agreement executed by Respondents No. 3 and 4. The complaint deserves dismissal at the threshold. The complainant seeking interest at the rate of 18% per annum be dismissed. The respondents No. 3 and 4 be held jointly and severally liable for refund and compensation, and any other relief deemed fit be granted in favour of Respondents No. 1 and 2, in the interest of justice.

3. OBJECTIONS ON BEHALF OF RESPONDENT NO. 4: In rebuttal to the execution petition, the JD No. 4 submitted that: -

- i. The complainant has not claimed any relief against Judgment Debtor No. 4, namely Bharat Vaidya, as the entire consideration amount was admittedly paid by the complainant to Judgment Debtors No. 1 and 2.
- ii. The final order dated 27.04.2019 was passed solely on the basis of the undertaking furnished by Judgment Debtors No. 1, wherein it was stated that the complainant's amount would be refunded with interest due to lack of construction progress at the site. Pursuant to the said undertaking, the final order dated 27.04.2019 directed Judgment Debtors No. 1 and 2 to refund the decretal amount of Rs.6,00,000/- along with interest to the complainant, since there had been no construction on the site for the last seven years.
- iii. No direction whatsoever was issued against Judgment Debtor No. 4, Bharat Vaidya, in the said final order. Since the decree under execution is founded entirely upon the undertaking given by Judgment Debtors No. 1 and 2, the same is liable to be executed only against

Judgment Debtors No. 1 and 2. Consequently, no coercive or execution proceedings are warranted or permissible against Judgment Debtor No. 4.

- iv. That Judgment Debtor No. 4 is neither a necessary nor a proper party to the present execution proceedings. No relief was claimed against him in the original complaint, and no relief was granted against him by this Authority. His presence is not required for execution of the decree against Judgment Debtors No. 1 to 3. Judgment Debtor No. 4 does not fall within the definition of "judgment debtor" as provided under Section 2 (10) of the Code of Civil Procedure, 1908. Accordingly, Judgment Debtor No. 4 is liable to be deleted from the array of parties under Order I Rule 10 (2) CPC.
- v. The present objections/reply be taken on record and Judgment Debtor No. 4, Bharat Vaidya, be ordered to be deleted from the array of parties in the present execution proceedings. It is further prayed that the execution proceedings be dismissed as against Judgment Debtor No. 4 and any other order deemed fit and proper in the facts and circumstances of the case may also be passed in favour of Judgment Debtor No. 4.

4. REJOINDER TO THE OBJECTION FILED BY THE JUDGMENT DEBTORS NO. 1 AND 2: The decree holders controverted the objections filed by the JDs no. 1 & 2 and submitted the following: -

- i. The rights and liabilities of the promoters are their internal matter and the present Execution Application has nothing to do with the liabilities as alleged. So far Judgments cited are concerned those are not applicable in present Execution Application. Moreover, the JDs have not completely cited the Judgments.
- ii. The Project Ansal Meadows Arun Hills is not a party to present Execution Application and no order as such has been passed against it.
- iii. The Decree Holders have nothing to do with the disputes if any arisen between JDs No.1 and 2 and Project Ansal Meadows Arun Hills member Vikas Madan and Bharat Vaidya.
- iv. The capacities under which the project has been booked not matter in issue at this stage. In the present Execution Application, the JDs who made statement are bound to make the payment as calculated in the Execution Application along with interest.
- v. It is specifically and emphatically denied that JD No.1 and 2 were compelled by the Chairperson of RERA for refunding the unit with interest U/s 31 of the Act as alleged. It is submitted that on 27-04-2019, the Judgment Debtor No. 1 for and on behalf of Judgment Debtor/Respondent No.2 fairly admitted that the flat had been booked by the Decree Holders/ Complainants as of now there has been no progress on the project, therefore stated that at this point of time the only thing they can do is to refund the amount along with interest and accordingly the order has been passed in the presence of Sh. Bharat Vaidya and Mohit Khanna. It is submitted not only the order has been passed, but in compliance of said order, the JD No. 2 i.e. Sh. Sumit Khanna furnished 08 number of cheques amounting to Rs. 75,000/- each. It is absolutely wrong to say that JD No. 1 & 2 are not responsible to refund the amount.
- vi. In the Execution Application, it is not to be seen/ decided that whether the act of Court is retrospective or prospective. It seems that the JD No. 1& 2 are trying to give new twist to present Execution Application and intending to re-open the matter afresh, which is not permissible under law. It is relevant to state here that in the present Execution Application, the dispute whatever raised amongst the JDs/ Respondents cannot be looked into. So far, the citation mentioned in present paragraph is concerned, the same does not make it clear that in what context the same has been passed and which of the court has passed the same.
- vii. It is denied that the interest rate which has been mentioned by the Real Estate Regulatory Authority is very high as alleged. The JD. No. 1 himself admitted the rate of

interest that is why the JD. No. 2 after receiving calculation as mentioned in Page 22 of the Execution Application submitted eight number of cheques in the office of RERA. It is also relevant to state here that the question of rate of interest cannot be raised at this juncture.

- viii. It is wrong and incorrect to the extent that the JD No. 3 & 4 are also liable to refund the amount as alleged. It is submitted that as per order Dated 27-04-2019 the JD. No 1 and 2 were liable to satisfy the order passed by this Hon'ble Authority.
- ix. That the contents of paras the reply are absolutely wrong and do not refer the fact that to which paras of Execution Application, the JD No.1 to 11 have furnished their reply. So far remaining paragraphs of reply are concerned, it is humbly submitted that in entire execution Application no such paragraphs numbered 12, 13 and 14 have been pleaded by Applicants/Complainants in the Execution Application mentioned in Form E1, Appendix IV, V, VI, VII & VIII. Otherwise also by looking into entire averments stated in Reply it seems that the JDs No1& 2 themselves are not sure about the contents of Reply and further intentionally and deliberately tried to confuse this Hon'ble Authority also and sworn false Affidavits which cannot be termed Affidavits in the eyes of law.
- x. The Applicants /Complainants prayed for the issuance of warrant of attachment of moveable and immovable properties of JD no. 1 and 2. The JD No.1 and 2 be also directed to furnish Affidavit U/o 21 rule 41(2) of the Code of Civil Procedure stating about the assets they are having with them. The Applicants/Complainants further prayed that both JDs No. 1 and 2 at be ordered to be arrested after issuance of arrest warrants.
- xi. All the contents of Reply are sufficient to prove that the JDs. No.1 and 2 did not bother to specifically admit or deny the Contents of Form E1, Appendix IV, V, VI, VI & VIII, which clearly enough to demonstrate the fact that the JD. No. 1 and 2 have expressly and impliedly admitted their liabilities.
- xii. At the-time of filing of Execution Application, the total amount including interest was due was 7,04,358/- as mentioned in Appendix VI and during the period from 22-05-2024 to 09-12-2024, the JDs No.1 and 2 have made certain payments and now after deduction of said payments, the Decree Holders/ Complainants are entitled to receive and Judgment Debtors No. 1 and 2 are liable to pay an amount Rs. 6,42, 488/- till 09-12-2024 as per the latest calculation sheet annexed with the execution application.

5. WRITTEN ARGUMENTS ON BEHALF OF JUDGMENT DEBTOR/ RESPONDENTS NO. 1 & 2 (UNIMEXX BUILDERS AND DEVELOPERS PVT.LTD.)

- i. The Judgment Debtors /Respondents have submitted that the decree holders have not approached this Hon'ble Authority with clean hands and have concealed material and crucial facts that go to the root of the maintainability of the present execution petition.
- ii. The Decree Holder namely Vandna Tuteja had voluntarily appeared before the Ld. Permanent Lok Adalat, NACT, Gurugram on 13.09.2024 and categorically made 'a statement expressing her willingness to withdraw her cases. On the basis of this statement, and with the consent of the parties, the complaints under Section 138 NI Act bearing No. NACT-55444-2019 And NACT-12298-20 19 were dismissed by the Lok Adalat on 14.09.2024. The certified copies of the said statements and orders passed by the Lok Adalat are already on record as Annexures R-1 to R-3.
- iii. That it is admitted position that decree holder instituted complaints under Section 138 NI Act bearing No. NACT 55444-2019 and NACT-12298-2019 against the JDs before the Court said Gurugram. It is also not in dispute that other than the transactions relating to the Flat/Project/ Property in-question there has never been any other transaction between the DH and JDs. Admittedly the decree holder has received the amount(s) from the JDs at the time of withdrawal of NACT complaint and the decree holder has failed to explain as to for

what purpose the JDs has handed over the cheques to the decree holder, which formed on the basis of NACT complaints and for what purpose the amount of the cheques have been received by the decree holder from the JDs.

- iv. That in terms of Section 21 of the Legal Services Authorities Act, 1987, the award passed by the Lok Adalat is final, conclusive and binding on all parties to the proceedings. Such an award is deemed to be a decree of a civil court and is executable as such. No appeal lies against the award of the Lok Adalat, and the dispute stands fully and finally settled. Once the Decree Holder voluntarily settled and withdrew her claims before the Lok Adalat, the present execution petition filed thereafter is wholly misconceived and is not maintainable. It is settled law as per the judgment passed by the Hon'ble High Court of Uttarakhand at Nainital in the Lok Adalat titled as Bharat Singh vs. State of Uttarakhand and another copy of the judgment is already attached with CM Application.
- v. That the Decree Holder has suppressed the fact of having withdrawn her earlier disputes before the Permanent Lok Adalat and has initiated the present execution petition without disclosing this vital fact. The conduct of the Decree Holder amounts to material concealment and abuse of the process of law. The pendency of this execution petition, despite the finality attached to the Lok Adalat award, amounts to re-litigation of an already settled matter and is liable to be dismissed on this ground alone.
- vi. That, without prejudice to the above, the detailed reply and documents on record clearly demonstrate that Respondents No. 1 and 2 (M/s Unimexx Builders & Developers Pvt. Ltd.) were not the original promoters or developers of the project "Ansal Meadows Arun Hills". They were themselves misled by Respondents No. 3 and 4 (Vikas Madan, Pankaj Madan and Bharat Vaidya), who were the landowners/brokers and who prepared misleading brochures and representations to the allottees. Respondents No. 1 and 2 never derived any benefit from the alleged transactions and were not aware of the fraudulent conduct of Respondents No. 3 and 4.
- vii. That it is further evident from the material placed on record that Respondents No. 1 and 2 did not receive or utilize any amount paid by the complainant and that they themselves were victims of deceit at the hands of Respondents 3 and 4. The documents also show that Respondents No. 1 and 2 have already issued refunds in the form of cheques, which are part of the record.
- viii. That, in view of the factual matrix and in light of Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016, Respondents No. 1 and 2 cannot be categorized as "Promoters" in the present case, since they neither owned the land nor developed the project nor engaged in any activity that would attract liability under statutory definition. The primary responsibility lies upon Respondents No. 3 and 4, who orchestrated the misleading practices and induced innocent parties, including Respondents No.1 and 2.
- ix. That in these circumstances, the execution petition deserves to be dismissed as not maintainable in view of the binding Lok Adalat settlement and also on the ground that Respondents No. 1 and 2 have no liability towards the Decree Holder. The Decree Holder has voluntarily settled her claims, has not challenged the Lok Adalat award before any competent forum, and cannot reopen the dispute by filing the present petition.
- x. In view of the, above submissions, it is most respectfully prayed that this Hon'ble Authority may be, pleased to dismiss the present execution petition as in fructuous, not maintainable and devoid of merit, and pass such other order as may be deemed fit in the interest of justice.

6. ARGUMENTS ON BEHALF OF PARTIES: The Id. Counsel appeared on behalf of the DHs mostly reiterated the submissions made through pleadings and also drew the attention of this

Authority to page 19 of the execution petition, whereby, they have sought relief(s), mentioned in para 1, supra for non-compliance of order dated 27.04.2019. Further, the Ld. Counsel drew attention towards plea raised by JDs 1 & 2 to the fact that entire amount has been received by the DHs and the JDs No 1 & 2 has no liability towards the DHs in view of the binding Lok Adalat settlement and, in this regard, it is submitted that, in pursuance to the aforesaid order dated 27.04.2019, the JDs issued eight cheques amounting to Rs. 75,000/-, reflected at Annexure P-1. It is further submitted that two cheques were honoured and five cheques bearing no. 091711, 091712, 091713, 091716 and 091718 were dishonoured, however, one of total eight cheques bearing no 091710 dated 10.06.2019, lost its presentation limitation for encashment till the same reached the DHs. It is further submitted that as per the calculation of the DHs the total recoverable amount was 7,04,358/- till 22.05.2024 and in this regard, he referred to page 4, para 7 of execution petition. Further submitted that on the dishonour of five cheques, the DHs were constrained to file complaint(s) under section 138 NI Act at Gurgaon and only an amount of Rs. 3,75,000/- was received by us on 14.09.2024 against five cheques and, thereafter, they had withdrawn the said complaint. Even, on perusal of rejoinder, they have appended calculation chart till 09.12.2024 and as per the same an amount of Rs. 6,42,488/- is due only upto the date of withdrawal of NI complaint. Controverting the contention of DHs, the JDs referred to the filing of application before this Authority for placing on record the copy of order of Lok Adalat and as per their contention, since, the aforesaid amount of Rs 3,75,000/- has been paid and the complaint(s) was withdrawn, they are not further liable to pay any amount. However, rebutting such plea, the Id. Counsel, further, submitted that the amount of Rs. 6,42,488/-, depicted in the calculation sheet a/w rejoinder, is still due and prayed to consider the factual position mentioned in the calculation sheet as well as the prayer made in execution petition. The Ld. Counsel for JDs 1 & 2, however, submitted that once the payment has been made before the Civil Court wherein the case has been referred to Lok Adalat, this Authority has no jurisdiction to recover the such amount when JDs have already withdrawn their complaint and prayed for dismissal of execution petition. On the other hand, the Ld. Counsel for the JD no. 4 stated that he has also filed the reply stated in objection that since the order was based on consent and JDs 1 & 2 had agreed to pay back the amount as per undertaking, I have got nothing to do in the matter, therefore, there is nothing no relief is prayed against me also. As such, submitted that in view of averments contained in objection filed by him, his name should have been deleted being heard finally that there is no relief claim is against him.

7. **ANALYSIS:** After having analysed the submissions of the parties and record vis a vis the settled position while adjudicating upon the execution petition, the Authority is required to consider whether:
 - A. The respondents/ Judgment Debtors No.1 & 2 had honoured the directions contained in the aforesaid order, passed by Town and Country Planning Department Himachal Pradesh dated 27.04.2019, vide which judgment debtors 1 and 2 i.e. M/S Unimexx Builders and Developers Private Limited were directed to refund the amount Rs. 6,00,000/- to the decree holders along with the interest accrued as per provision of section 18 of RERA Act read with rule 15 of HP RERA Rules, 2017 and were also directed to deposit the post- dated cheque on or before 10.05.2019 with the designated officer RERA HP cum Director T & CP Department HP?
 - B. Whether the objections raised by the Judgement Debtors No.1 & 2 carry sustainability in view of the facts emerged during the adjudication of the matter?
8. Before looking into this aspect, it is apt to consider as to relief sought by the Decree Holders and the scope of executing court in execution proceedings at this stage. In this regard: -
 - A. This authority takes note of the settled position that the decree holder is at liberty to seek for any mode of relief which is easier for him to recover the decree amount. The same was already

considered by the Hon'ble Apex Court in a case of **State Bank of India v. Messers Indexport Registered and others reported in AIR 1992 SC 1740** and it was held that "it is the right of decree holder to proceed with it in a way he likes." Now, the observations of Hon'ble Apex Court, on the scope of interference of executing court and scope of entertaining the objections filed by Judgment Debtor, is worth considering. In **Rahul S. Shah Vs Jinendra Kumar Gandhi and Ors., Civil Appeal Nos. 1659-1660 of 2021, decided on 22.04.2021**, the Hon'ble Court had made the following observations:

"24. In respect of execution of a decree, Section 47 CPC contemplates adjudication of limited nature of issues relating to execution i.e. discharge or satisfaction of the decree and is aligned with the consequential provisions of Order 21 CPC. Section 47 is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind. Firstly, the question must be the one arising between the parties and secondly, the dispute relates to the execution, discharge or satisfaction of the decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.

25. These provisions contemplate that for execution of decrees, executing court must not go beyond the decree. However, there is steady rise of proceedings akin to a retrial at the time of execution causing failure of realization of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the executing court and the decree-holder is deprived of the fruits of the litigation and the judgment-debtor, in abuse of process of law, is allowed to benefit from the subject-matter which he is otherwise not entitled to.

26. The general practice prevailing in the subordinate courts is that invariably in all execution applications, the courts first issue show-cause notice asking the judgment debtor as to why the decree should not be executed as is given under Order 21 Rule 22 for certain class of cases. However, this is often misconstrued as the beginning of a new trial. For example, the judgment-debtor sometimes misuses the provisions of Order 21 Rule 2 and Order 21 Rule 11 to set up an oral plea, which invariably leaves no option with the court but to record oral evidence which may be frivolous. This drags the execution proceedings indefinitely. 27. This is antithesis to the scheme of the Civil Procedure Code, which stipulates that in civil suit, all questions and issues that may arise, must be decided in one and the same trial. Order 1 and Order 2 which relate to parties to suits and frame of suits with the object of avoiding multiplicity of proceedings, provides for joinder of parties and joinder of cause of action so that common questions of law and facts could be decided at one go."

- B.** The Hon'ble Supreme Court of India has frequently addressed these challenges, providing clarity on complex aspects of execution proceedings. Before exploring the Hon'ble Supreme Court's latest ruling, it is important to understand the basic legal framework governing the execution of decrees. A decree is essentially the formal expression of an adjudication determining the rights of the parties in a suit, and its execution ensures that the successful party enjoys the benefits awarded by the court. Execution may involve various steps, including the delivery of property, payment of money, or arrest and detention of the judgment debtor, depending on the nature of the decree. In a recent landmark ruling in **M/s Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association (2024)**, the Hon'ble Supreme Court examined several critical issues related to the execution of decrees. This case revolved around the enforceability of a decree after prolonged litigation and the applicability of certain legal doctrines such as *res judicata* and *estoppel* in execution proceedings. In this matter, the appellant, M/s Shree Chamundi Mopeds Ltd., had obtained a favourable decree from a lower court, which was upheld by the Hon'ble High Court. The decree involved the delivery of

possession of immovable property, which was occupied by the respondent, Church of South India Trust Association. Despite the decree being final, the respondent challenged its execution on multiple grounds, including that the decree had become unexecutable due to subsequent events and that it was barred by the doctrine of res judicata. The executing court rejected the objections, but the matter reached the Supreme Court through special leave petitions. The Hon'ble Apex court, while deciding the matter, had addressed complex issues of law surrounding the execution of decrees, particularly in light of claims that the decree had become unexecutable due to the lapse of time and changes in factual circumstances. The Supreme Court's judgment in this case clarified several important principles governing the execution of decrees, which are summarized as follows:

- i. *The Hon'ble Court reaffirmed that the doctrine of res judicata applies to execution proceedings as well. Once an issue has been adjudicated upon by a competent court, it cannot be reopened in subsequent proceedings, including those related to execution. The Court emphasized that repeated objections by the judgment debtor, which had already been decided in previous stages of litigation, cannot be entertained in the execution stage.*
- ii. *A significant issue raised in this case was whether subsequent changes in circumstances, such as alterations in the status of the property, could render the decree unexecutable. The Court held that unless the decree itself has been altered or set aside through legal means, changes in circumstances after the passing of the decree do not automatically make it unenforceable. The Court stated that executing courts cannot revisit the merits of the case or the decree's validity unless there is a legal modification.*
- iii. *The Hon'ble Supreme Court underscored the importance of Section 47 of the CPC, which provides that all questions arising between the parties to the suit regarding the execution, discharge, or satisfaction of the decree shall be determined by the executing court and clarified that the executing court has wide powers to ensure the decree's enforcement, but, it cannot go beyond the decree or alter its terms.*
- iv. *The respondent also raised the defence of estoppel, arguing that the decree-holder's conduct during previous proceedings precluded them from enforcing the decree. The Hon'ble Court dismissed this contention, noting that estoppel cannot be used to bar the enforcement of a valid and final decree, especially where the judgment debtor has benefitted from delaying the execution.*
- v. *The Hon'ble Court also stressed the need for a practical approach in execution proceedings, recognizing that the very purpose of litigation is defeated if decrees are not enforced efficiently. It urged lower courts to avoid unnecessary technicalities that delay execution and to ensure swift enforcement of judgments to uphold the rule of law.*

It is observed that this ruling from the Hon'ble Supreme Court has significant implications for the execution of decrees and it reinforces the principle that once a decree is passed, it must be executed in a timely and effective manner, and judgment debtors cannot frustrate the process through frivolous objections or procedural delays. Further, the judgment underscores the finality of decrees and reiterates that courts cannot revisit issues that have already been decided. Moreover, the Hon'ble Court's firm stance against delaying tactics sends a clear message to judgment debtors that they cannot escape liability by exploiting procedural loopholes. This is expected to reduce the number of frivolous objections raised during execution proceedings, leading to more efficient enforcement of decrees.

C. Now reverting back to the issues in hand, depicted vide para 7, (supra), this Authority observes that the JDs have reiterated their defence, primarily, with regard to their liabilities as was taken in the reply filed to the main complaint. Further, it is observed that the JDs have also thrust upon the fact that since, the complaint under 138 was withdrawn by the DHs in view of the fact that

due amount has already been paid to them and they are not further liable to pay any amount to the DHs. At this juncture, this Authority examined the contents of application filed by the JDs 1 & 2 during the adjudication of the matter, praying therein, for placing on record the order of National Lok Adalat, wherein, JDs have put efforts to reflect their Bonafide on the fact that entire liability stood discharged. On the contrary, perusal of rebuttal, submitted by decree holders, reveals that the complaint under 138, arose out of cheques issued in favour of decree holders, in pursuance to the directions contained in aforesaid order dated 27.04.2019, was withdrawn on the receipt of amount of Rs. 3,75,000/- till 14.09.2024 and it is also an admitted fact that the DHs have received a total amount of Rs. 5,25,000/- against principal amount of Rs. 6,00,000/- and as regard the interest amount which comes to Rs. 3,71,930/- only remains unpaid against the principal amount. As such, the Authority is of considered view that the JDs have paid only the principal amount till date that too Rs. 5,25,000/- against seven cheques and are under legal obligation to pay remaining interest amount of Rs. 6,42,488/- including left out principal amount of Rs. 75,000/- as per calculation sheet enclosed with the rejoinder/ pleading by the DHs. After having analysed the issue and shorn of unnecessary details, the Authority finds force in the contention of the DHs that the JDs 1 & 2 have not honoured the direction contained in order dated 27.04.2019 and the Authority also takes note of non-compliance of said direction by the JDs 1 & 2.

- D. The attention of this Authority is also drawn towards the objection raised by the JDs with regard to their liability. However, without going into detailed discussion on these points, we are of this view that as per settled position, depicted in the preceding paras, the limited question for determination/ adjudication of this Authority, at this stage, is whether the JDs have complied with the directions date 27.04.2019 or not. In case, the question regarding liabilities of JDs is looked into, the same would amount to reopening the matter given that the JDs were afforded ample opportunities to put fourth their defence in rebuttal to original complaint and moreover, the objections raised by the JDs 1 & 2 are not subsequent developments after passing of said order dated 27.04.2019. On the contrary, it is explicit from the admission of Sh. Mohit Khanna functioning in the capacity of Director of M/s Unimexx Builders & Developers (JDs 1 & 2) that since, no progress was made on the project site, the only option was to refund the amount along with interest. As such, after taking on record the said statement of Sh. Mohit Khanna, the aforesaid direction to refund the amount of Rs. 6 Lakhs a/ w interest was passed to the JDs. Hence, at this stage, taking controverting plea by way of filing objection to the execution petition, can not thwart the operation of said direction/ order dated 27.04.2019. in this regard, in addition to above mentioned observations of Hon'ble Apex Court, the Authority also takes note of the position laid down in **Nalagarh Dehati Cooperative transport Society vs. Suraj mani, 1976 SLJ 172**, where in it was held that *the executing Court cannot go behind the decree even if erroneous on facts or law*. In **Rajasthan Financial Corporation vs. Man Industrial Corporation Ltd. (2003) 7 SCC 522** reiterated that *executing courts must take the decree according to tenor*. Though, it is also a settled position that every objection is required to be adjudicated upon in the same execution petition and not by a separate suit/ lis, yet, the objections would not be in the nature that in event of adjudicating upon them, the same would amount to reopening the matter. As such, the perusal of plea of JDs 1 & 2 as observed, supra, is nothing but a deliberate attempt to prevent the enforcement of valid and final order. Further, the Authority emphasizes on the ratio decidendi laid down in **Deep Chand vs. Mohan Lal (2000) 6 SCC 259** wherein it was held that *the purpose of execution proceedings is to enable the decree- holder to obtain the fruit of his decree and even if there is any ambiguity, interpretation which assists the decree holder should be accepted; the execution of decree should not be made futile on mere technicalities. It was further observed that keeping in view the prolonged factum of litigation*

resulting in the passing of decree in favour of a litigant, a rational approach is necessitated and the policy of law is to give a fair and liberal and not a technical construction enabling the decree holder to reap the fruits of his decree.

- E. The present matter has also another aspect which attracted the attention of this Authority that section 44 of the Act prescribes liberty to the person aggrieved by any direction/ order of the Authority or Adjudicating Officer, as the case may be, to prefer an appeal to the Appellate Tribunal and further sub section 2 of the said section mandates to prefer an appeal within a period of 60 days from the date on which a copy of direction/ order or decision is received by the aggrieved person. In the instant matter, it is clear from the record that no appeal has been preferred by the JDs till date and as such the aforesaid order dated 27.04.2019 directing the JDs 1 & 2 to refund the amount of Rs. 6 Lakhs along with interest, has attained finality. Hence, the JDs are also estopped to raise flimsy objections, at this stage, which amounts to preventing the enforcement of final order passed on 27.04.2019.
- F. It is also observed that as per objection raised by JDs 1 & 2, implicating respondents no 3 & 4, that they are liable to pay compensation to JDs 1 & 2 given that entire money was paid to the DHs by them. However, this aspect requires no detailed consideration being their internal matter and unconnected with the issue in hand and further in view of the admission of Director representing M/s Unimexx Builders & Developers, contained/ referred in order dated 27.04.2019, the JDs are estopped from raising such plea in the present execution petition.
9. **DECISION:** In view of above detailed analysis, the sum and substance of the matter is that in view of the final order dated 27.04.2019, the JDs 1 & 2 are under legal obligation to refund a total sum of Rs. 6,42,488/-, depicted in the preceding paras. Accordingly, having regard to the decree and the material available on record, the Authority is satisfied that the objections of JDs and additional submissions are patently misconceived in so far as they seek to frustrate or indefinitely delay execution of final order. Hence, in the given circumstances, the Authority, hereby, directs that the objections as well as additional submissions of the JDs are dismissed to the extent they are inconsistent with the final order dated 27.04.2019 and the directions contained therein. Further, the Authority, in pursuance to the provisions, contained under section 40 of the RERD Act, 2016 as well as Rules/ Regulations made thereunder, directs Judgment Debtors 1 & 2 to: -
- Deposit the remaining decretal amount of Rs. 6,42,488/- including interest to the DHs as per their aforesaid calculation sheet within a period of 30 Days from the date of this order;
 - To file an undertaking of their assets on the format contained in Appendix XVI of HP Real Estate Regulation no. 3, within a period 15 days from the date of this order.

It is also directed that in event of failure of JDs 1 & 2 to comply with the aforesaid directions within the prescribed period, the same would entail the JDs 1 & 2 for further initiation of coercive action by the Authority. It is further directed that the JDs shall submit compliance report of above directions, with this Authority, on or before 26th January, 2026 and during this period the said JDs are also restrained from issuing any threats, coercive notices, repetitive objections or harassing communications to the DHs in relation to this matter pending compliance with this order. The parties be informed accordingly.


(Amit Kashyap)
MEMBER


(R.D. Dhiman)
CHAIRPERSON


(Vidur Mehta)
MEMBER