

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.4/HP/2023
Date of Decision: 09.05.2024

Sumit Khanna/Unimexx Builders and Developers, R/o B-6/4, 2nd Floor,
Commercial Complex, Safdarjung, Enclave, New Delhi 110029

Appellant

Versus

1. Kamal Arjan Mirchandani;
2. Mrs. Kanta Arjan Mirchandani (Power of Attorney Holder);
Both resident of 603 Corner View CHS, Corner of 15th and 33rd
Road, Bandra West, Mumbai 400050

Respondents

CORAM:

Justice Rajan Gupta

Chairman

Argued by: Mr. Mohit Rathee, Advocate,
for the appellant.

Mr. Viren Sibal, Advocate,
for the respondents/caveators.

O R D E R:

Rajan Gupta, Chairman:

Appellant has posed the challenge to order dated 26.12.2023 passed in execution petition by the Himachal Pradesh Real Estate Regulatory Authority at Shimla (hereinafter referred to as, 'the Authority'), which reads as under:

"In the present matter, Sh. Shivank Singh Panta Ld. counsel has put in appearance on behalf of the JD and prayed for time to file Power of Attorney and seek proper instructions. The Ld. Counsel for JD has further prayed for recalling of previous order where in his right to file objections was closed. Ld. Counsel for the decree holder submits that they were unable to file list of assets for want of proper knowledge qua assets of the JD and prayed that the Authority may direct the JD to file the list.

This Authority has heard both the parties. From the perusal of the last order it transpires that the right of the JD to file objections in the present execution petition stand already closed vide previous order. Therefore, in the interest of justice the Authority here by passes the following orders:

- 1. The Counsel for the JD is directed to file Power of Attorney within one week from date of passing of this order.*
- 2. There is no provision of recalling of the order in the RERD Act, 2016.*
- 3. The Judgment debtor shall either deposit the decretal amount along with up-to date interest or shall file list of assets in order to enable this Authority to execute the order on or before the next date of hearing.*

List the matter for hearing on 20th January, 2024 at 11 AM through WebEx.”

2. Learned counsel for the appellant contended that before the impugned order was passed, opportunity of hearing was not granted to the appellant, thus, he could not put forward his stand. The right of the Judgment Debtor (for short, ‘JD’) to file objections should not have been closed without affording any opportunity. The Authority has failed to consider that the order would seriously jeopardise the interests of the JD.

3. Mr. Viren Sibal, has assisted this Bench as a Caveator. He submitted that JD was granted three opportunities to file its objections, but he chose not to appear before the Executing Court. He, thus, cannot be allowed to take the benefit of his own wrong. He further submitted that the appellant had filed appeal against the main order dated 08.07.2022 passed by the Authority, but the same was dismissed by this Tribunal. At the stage of execution, he cannot escape the rigors of Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (in short, ‘the Act’).

4. I have heard learned counsel for the parties and have given careful thoughts to the facts of the case.

5. It is evident that the complainant filed a complaint seeking direction to the respondent-promoter to pay rent amounting to Rs.21,48,000/- along with interest @ 18%; for refund of sale consideration of Rs.65,00,000/-; for refund of GST paid by her amounting to Rs.7,49,000/- @ 18% interest and compensation of Rs.20,00,000/- on account of mental agony, hardships and harassment.

6. The complaint was, however, dismissed directing the promoter to refund a total sum of Rs.71,00,000/- along with interest to the allottee. It was also directed that if needful is not done within 60 days, penal consequences would follow. Against the said order, the appellant preferred an appeal before this Tribunal, same was dismissed vide order dated 04.10.2023, which is reproduced hereunder for ready reference:

“It appears that incomplete paper-book has been received in the Registry vide Dairy No.02 dated 05.01.2023. There are number of objections have been raised by the Registry. Thereafter, four reminders were sent by the Registry to the appellant i.e. on 13.01.2023, 03.02.2023, 23.02.2023 and 16.03.2023 but to no response.

2. In view of the above facts that incomplete paper book has filed in the Registry and no number has been assigned to the appeal. Same cannot be entertained.

3. Dismissed as such.

4. Copy of this order be sent to appellant/learned counsel for the appellant and Himachal Pradesh Real Estate Regulatory Authority, Shimla for information.

5. File be consigned to the record.”

7. In view of above, a query was put to learned counsel for the appellant, at the outset, as to how the present appeal against the order

passed in execution proceedings would be maintainable as the appeal against the main order passed by the Authority at Shimla has already been dismissed on the ground of non-compliance of the mandatory provisions of the Act. No clear answer is forthcoming.

8. It is, thus, evident that the present appeal cannot be entertained in view of non-compliance of condition of pre-deposit in terms of the proviso to Section 43(5) of the Act. The ratio of the judgment in *M/s Newtech Promoters and Developers Pvt. Ltd. v. State of UP and others etc.* 2022 (1) RCR (Civil) 357 would be attracted in the instant case.

9. Appeal, thus, cannot be entertained and same is hereby dismissed.

10. Copy of this order be sent to the parties, their counsel or the Authority at Shimla.

11. File be consigned to the records.

Announced:
09.05.2024

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Manoj Rana