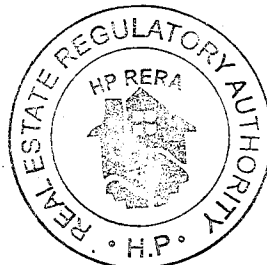


**Himachal Pradesh Real Estate Regulatory Authority,
Annexe Building ,Majitha House, Shimla-2**

PROCEEDING OF THE DAY

Date & Time	11 th November, 2021 at 3:30 PM through Webex
Execution Petition No. 11/2021	Sh. Dilip Kumar V/s Himland Executive Residences, Divya Kunj, Officers Colony, Rajgarh Road, Solan
Suo Motu Execution Petition No. 06/2021	H.P. Real Estate Regulatory Authority V/s Himland Executive Residences, Divya Kunj, Officers Colony, Rajgarh Road, Solan
Decree Holder	Sh. Dilip Kumar S/o Sh. Harinder Tiwari R/o Flat No. 904/A, Tarika Apartments, Sector 43, Chakarapur (74) Gurgaon, Haryana.
Represented through	Sh. Vijay Kumar Arora, Ld. Advocate
Judgement Debtor	Himland Executive Residences, Divya Kunj, Officers Colony, Rajgarh Road, Solan
Respondent Represented through	Sh. Arvind Kumar Singh, Ld. Advocate

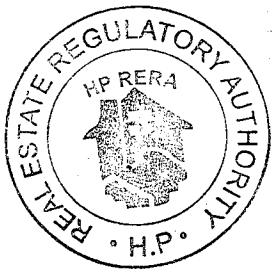


ORDER

CORAM: - Chairperson and both Members

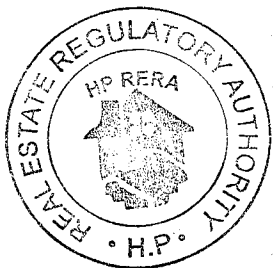
In terms of previous order, response was filed by the DH to the objections filed by the JD and the matter was listed for argument on 21st October, 2021. The Authority by way of this order is deciding the objections of the JD filed in the execution petition.

In the objections, it has been contended on behalf of the JD that the DH has concealed material facts from this Learned Court while obtaining the order dated 18.1.2021 and relied on judgment of the Hon'ble Apex Court in S.P. Chengalvarya Naidu vs Jaganath wherein it was held that a person whose case is based on falsehood, has no right to approach the court and can be thrown out any stage of the litigation. He submitted that the judgment dated 18.1.2021 was obtained by DH by playing fraud upon this Authority. It was submitted on his behalf that the DH had pleaded before the Authority that he had made payment of Rs 9,74,635/- to the JD/respondent promoter, without furnishing any proof in that regard but in reality he had made a payment of only Rs. 7,19,634/- as per the MOU annexed with complaint and further contended that the Authority has wrongly ordered refund of Rs 9,74,635/- instead of Rs 7,19,634/-. He has further contended that the MOU was admitted by both the parties and the decree to the extent it directs the JD to return an amount of Rs 9,74,635/- is not binding on the JD as it has been obtained by fraud. It has been further submitted by the JD that the completion of the project was delayed due to changes of law/Acts including the repeal of H.P. Apartment and Property Regulation Act, 2005 and amendment in Himachal Pradesh Town and Country Planning Act, 1977 which were beyond JD's control and amounted to force majeure. It has been further alleged that the

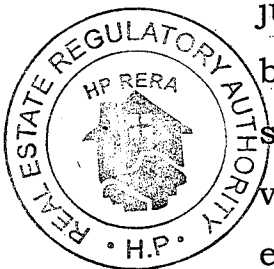


DH and other buyers were informed from time to time about developments in the project, including the formalities required to be fulfilled by the JD/promoter on account of aforesaid changes in the law/Acts. The fact that DH and other buyers neither raised any dispute before any forum nor did they make any demand for refund from the JD from 01.01.2009 till the filing of the complaint with this Authority proves that they were fully satisfied with the efforts of the JD. It has been submitted that DH is not entitled to any claim as they were themselves responsible for the delay in the completion of the project. The JD has further alleged that the direction of the Authority in para no. 23 (v) of the order of this Authority dated 18.01.2021 whereby the JD has been barred from selling/allotting/booking any unsold/unbooked flats in the project in question is illegal and unjustified, particularly when on account of non-payment by the buyers, including the DH, the progress of the project was hampered. It has been further contended that the present execution petition is premature as the JD is permitted to complete the project up to 10.05.2024 in terms of the registration certificate dated 11.05.2020 issued by this Authority. The JD has contended that in view of the various judgments of the Hon'ble Supreme Court including LIC V/s Escorts (1986) 1 SCC 264, corporate veil of a Company can be lifted only in exceptional case of fraud, improper conduct, evasion of taxes, etc. and none of the said grounds are available in the present case. It has been submitted that the promoters have invested not only 100 percent of the total invested amount but also huge funds from their own resources.

The DH has filed a written response to the aforesaid objections. In response to the objection pertaining to the discrepancy in the total amount paid by the DH to the JD, the DH has submitted that this particular objection is not

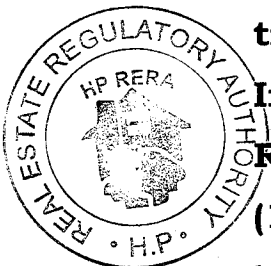


maintainable at such a belated stage and the Authority has passed a detailed order after thoughtfully going through the entire record of the case. It has been submitted that Executing Court cannot go behind the decree and the decree has to be executed in its letter and spirit. He has further submitted that as the JD has intentionally not complied with the order therefore coercive measures may be taken against him to get the decree/ order executed. It has been further submitted on his behalf that the objections of the JD to the present execution petition are not legally tenable and deserves to be rejected on the ground that JD by way these objections is making an attempt to challenge the order dated 18.1.2021 on merits which he cannot be legally permitted. It has been submitted on behalf of the DH that the JD did not specifically rebut the claim of the DH regarding the payment of Rs 9,74,635/- in the reply to the main complaint and that the present objections in execution is just an attempt to delay the proceedings. He has submitted that the proof qua the aforesaid payments was appended with the main complaint and also filed the same record along with reply to the objections of the JD to the execution proceedings as Annexure C (Collectively). The DH has denied rest of the objections of the JD and has submitted that it is the JD who had cheated the investors including the DH as at the time when the flats were booked the JD did not have requisite permissions. The DH has reiterated that judgment dated 18.01.2021 passed by the Authority is well reasoned and justified. Qua the allegation of the JD against the DH and other buyers as to the delay in completion of project, it has been submitted that Authority has adjudicated the aforesaid issue vide the above mentioned order and now at the stage of execution the JD cannot take such kind of pleas. The contention of the JD that he has been cheated and DH has played fraud while obtaining the order has been strictly denied.



Arguments heard. Primarily the main contention on behalf of the JD is that the direction to refund the amount of Rs 9,74,635/- in the order dated 18.1.2021 is wrong and contrary to the facts as the DH had paid an amount of Rs 7,19,634/- as per the MOU dated 13.01.2016. It was argued on his behalf that no cash payment was ever received by him and that receipts qua cash have not been issued by the JD and therefore he is not liable to pay the amount of Rs 9,74,635/- as directed by the Learned Authority in the order. In response the Ld. Counsel for the DH, Sh. Vijay Kumar Arora has argued that the aforesaid cash receipts have been issued by ex-director of the JD company named Sh. Pradeep Kumar Pathak. He has submitted that the Authority has passed the order sought to be executed by the present proceedings after careful perusal of the record of the case and that the JD cannot take the aforesaid pleas at the stage of execution. He has further submitted that the appropriate recourse available with the JD was to prefer an appeal in terms of the Act before the appropriate forum. He argued that it is a fit case for the Authority to get its order executed by taking coercive measures.

This Authority has heard both the parties and gone through the record. The **Hon'ble High Court of Himachal Pradesh in Nalagarh Dehati Cooperative Transport Society versus Suraj Mani 1976 Shimla Law Journal page 172** held that executing court cannot go behind the decree even if it is erroneous on law or facts. **Hon'ble Supreme Court in case titled as Rajasthan Financial Corporation versus Man Industrial Corporation Ltd. (2003)7 SCC 522 and Rameshwar Das Gupta versus State of UP and another (1996) 5 SCC 728** has held that executing Court cannot go behind the decree and it has take the decree according to its tenor. The Hon'ble Supreme Court in the case of **Vasudev**



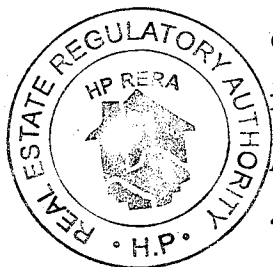
Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Ors.
(1970)1 SCC 670 held as under

“6. A Court executing a decree cannot go behind the decree between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.”

Further the ratio of the judgment in **Mohd. Masthan vs Society of Congregation of the Brothers of the Sacred Heart and another(2006) 9 SCC 344 or MANU/SC/1375/2006** it was held by the Hon’ble Apex Court that executing court would not enter into the question that the decree sought to be executed was obtained by fraud or by collusion.

From the aforesaid it is settled law that the executing court cannot go behind the decree and cannot entertain the objection that decree was incorrect in law or on facts or was obtained by fraud or by collusion. Hence, the order dated 18.01.2021 is binding on both the parties and the objections of the JD cannot be sustained.

Otherwise also the objection of the JD was primarily that an amount of Rs 2,54,366/- alleged to be paid in cash by DH was never received by the JD and he denied the issuance of all the cash receipts appended by the DH. From the perusal of cash receipts appended with the reply to objections by JD as Annexure C (Collectively) it transpires that an amount of Rs 4,74,635/- was paid by DH through cheques and remaining 5,00,000/- lakhs was paid through cash. In the annexure C, five receipts of cash for one lakh each has been appended. The JD is denying receipt of part of the aforesaid cash amount



which prima-facie, he cannot be permitted to do so. The JD cannot be permitted at his whims to choose a particular amount of cash and say that only this amount has been paid when the cash receipts are for the entire amount. Further in case he was actually aggrieved by the order, then he could have filed appeal which right he has chosen not to exercise. Therefore it can safely be concluded that the judgment/decree is reasoned one and binding on both the parties.

Having considered the entire submissions made by the Learned Counsels for the decree holder and judgment debtor, the objections of the JD are hereby dismissed.

In the interest of justice, JD is granted one last opportunity to comply with the orders under execution dated 18.1.2021 and refund the decretal amount along with interest and penalty in terms of the aforesaid order on or before the next date of hearing. If the JD fails to fully satisfy the decree before the next date i.e. 1st December, 2021, he is further liable under Section 63 of the Act, to pay a penalty of Rs. 5000/- per day for each day of default in complying with this order starting from the next i.e. 2nd December, 2021. Both the parties are directed to be personally present on the next date.

List the matter for physical hearing on 1st December, 2021 at 3 PM.

B.C. Badalia
B.C. Badalia
MEMBER

skant
Dr. Shrikant Baldi
CHAIRPERSON

Rajeev Verma
Rajeev Verma
MEMBER

