

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH**

Execution Petition no.PET2023010

IN THE MATTER OF:-

Mrs. Madhu Bala, Daughter of Sh. Gopal Krishan, Resident of 10, Street no. 5A, Near Magnum opus coaching Centre, Namdev Nagar, Bathinda Punjab, 151001

..... Decree Holder

Versus

Omaxe Limited, Shop no. 19-B, First Floor, Omaxe Celebration Mall, Sohna Road, Gurgaon, Haryana and Corporate office at 7, LSC, Kalkaji, New Delhi

.....Judgment Debtor

Present:- Sh.Sandeep Sachdeva, Ld. Counsel for Decree Holder along with Reetu, Madhu Bala & Mohit Goel
Sh. Shivank Singh Panta Ld. Advocate for Judgment Debtor through WebEx.

Final date of hearing: 09.03.2026

Date of pronouncement of order: 30.03.2026

Interim Order

Coram: Chairperson and Member

Brief facts:-

1. BRIEF FACTS:-

- 1) That the complainant- decree holder entered into an agreement for sale (herein after referred as 'the agreement') on 16th September of 2019 for Flat no. PWD/JACARANDA-C/509 on 5th floor in the group housing project known as OMAXE PARKWOOD-1 situated

at Baddi, Distt. Solan (H.P) (Registration no. RERAHPSOP9170007) of the Omaxe Ltd. respondent-Judgment Debtor for total consideration of 15,52,195/- i.e. Fifteen Lakhs Fifty Two Thousand One Hundred and Ninty Five rupees only/-. The Decree Holder paid amount of rupees 14,46,153/- i.e. Fourteen Lakhs Forty Six Thousand One hundred and Fifty Three rupees only/- as per payment schedule.

- 2) Another agreement for sale for second Flat was executed between Smt. Reetu, Mukesh Kumar and the respondent on 16th August 2019 for flat number as PWD/JACRANDA-C/413 on 4h floor in the same housing project. the total sale consideration was Rs. 10,75,975/- i.e Ten Lakhs Seventy Five thousand Nine Hundred and Seventy Five Rupees/-, Out of which Rs. 9,90,000/- i.e. Nine Lakhs Ninety Thousand Rupees/- are paid as per the payment schedule in the agreement. The rest of amount is to be paid at the time of offer of possession. The afore mentioned Flat was re-allotted by the respondent company to the present Decree Holder and all the rights and liabilities of Smt. Reetu and Mukesh Kumar were assigned by both of them in favour of Smt. Madhu Bala.
- 3) That the delivery of possession as per clause 7.2 of the agreement was to be delivered on or before 20.10.2020. However, the judgment debtor failed to deliver the possession of the flat on the said date. When the pleas of decree holder fell into deaf ears for a prolonged period the decree holder moved a complaint no. HPRERA2023006/C, for delivery of possession of flat and interest for delay in possession, against respondent-judgment debtor before this Authority. After thorough litigation the complaint came to be decided vide final order dated 12.09.2023 in the favour of complainant-decree holder.
- 4) That the operative part of the final order dated 12.09.2023 is here as under:

"12. Relief- Keeping in view the above mentioned facts, this Authority in exercise of power vested in it under various provisions of the Act, rules and regulations made there under, issues the following orders /directions:

A. The Complaint is hereby allowed.

B. The respondent is directed to pay the interest for delayed possession, at the SBI highest marginal cost of lending rate plus 2% as prescribed under Rule 15 of the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017 to the complainants with respect to flat no. 509. The present highest MCLR of SBI is 8.7 % hence the rate of interest would be 8.7+2 % i.e. 10.7% per annum on the amount paid by the complainant i.e. Rs. 14,46,153/-for every month of delay from the due date of possession 20.10.2020 till the date when valid offer of possession is made.

C. The respondent is directed to pay the interest for delayed possession, at the SBI highest marginal cost of lending rate plus 2% as prescribed under Rule 15 of the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017 to the complainants with respect to flat no. 413. The present highest MCLR of SBI is 8.7 % hence the rate of interest would be 8.7+2 % i.e. 10.7% per annum on the amount paid by the complainant i.e. Rs. 9,90,000/-for every month of delay from the due date of possession 20.10.2020 till the date when valid offer of possession is made.

D. The arrears of interest on delayed possession accrued from 20.10.2020 till the date of passing of this order i.e. 12.09.2023 shall be paid to the complainant by respondent within 60 days from the date of passing of this order and thereafter monthly payments of interest till handing over of possession shall be paid before 10th of each subsequent month.

5. That vide the final order the Respondent-Judgment Debtor was directed to comply with directions/orders of this Learned Authority within 60 days from the passing of final order. However, the period of 60 days came to an end on 11th November of 2023 and the respondent-judgment debtor, in complete violation of order of this Authority, has neither made payment as ordered by the Authority nor has made offer of possession nor delivered the possession of flat in question till the date. Hence, rendering the decree and continuous effort of the complainant-decree holder is completely fruitless.
6. That it has been more than 3 years that the complainant-decree holder has been awaiting delivery of possession of the flat which was promised by the respondent-judgment debtor. It is further apt to mention that the complainant-decree holder has been continuously requesting the respondent-judgment debtor to comply with the orders of this Authority, however the Respondent-Judgment Debtor has chosen to ignore pleas of the complainant-decree holder and has kept a contemptuous attitude towards the orders of this Learned Authority.
7. That the period for filing statutory appeal has elapsed, the respondent judgment debtor to the knowledge of Complainant-Decree Holder has not filed any appeal, therefore, the final order dated 12.09.2023 passed by this Learned Authority has attained its finality and binding upon the Respondent-Judgment Debtor. Hence, the present execution petition.

2. OBJECTIONS FILED BY JUDGEMENT DEBTOR:-

That the respondent/ judgment debtor has filed the present Objections / Reply to the Execution petition through Sh. Vishal Chawla being the authorized representative/ signatory of the

respondent/judgment debtor. The authorized representative/signatory is well conversant, privy and acquainted with the factual matrix of the present case. Subject to above, the Judgment Debtor/ Respondent proceeds to submit its Reply/Objections to the Execution Petition filed by the Petitioner/Decree Holder on the records of this Authority as under:-

- I. That the offer of fit out possession for residential unit/flat bearing no. PWD/JACARANDA-C/509 and PWD/JACARANDA-C/413 respectively applied by the respondent/ judgment debtor in the group housing project known as Omaxe Parkwood-I situated at Baddi, Distt. Solan has been issued to the decree holder on 05.02.2024 and he has been duly informed that the construction work of the said residential unit has been completed and is now ready for fitment possession. The judgment debtor has issued the fitout possession in favour of the decree holder. The decree holder has been further requested to make payment of the remaining sale consideration amount of the said residential unit. The judgment debtor is further ready and willing to make arrangements to enable the decree holder to inspect the construction and structural quality, interiors of the final product (the said residential unit/ flat) he has already purchased to satisfy himself regarding the finishing works of the flat/unit. The true copy of the fitout possession letter dated 05.02.2024 is being annexed herewith and marked as Annexure R-1.
- II. That the judgment debtor/ respondent/promoter is in the process of preferring an appeal in the Ld. Haryana Real Estate Appellate Tribunal, Chandigarh thereby, assailing the Award dated 12.09.2023 passed by this Ld. Authority however, the mandate as carved out under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 is a pre-requisite which needs to be complied

with since there is no escape from the requirement of pre-deposit of total amount to be paid to the allottee including interest, penalty and compensation under the said Award.

- III. That the judgment debtor/respondent takes strong objection to the claim of the decree holder as to he being entitled to interest and penalty in terms of Sections 37 and 68 respectively of the *ibid* Act since the penalty for failure to comply with the orders of Authority by the promoter has been envisaged in Section 63 of the said Real Estate Act, 2016 whereas, Section 68 on the contrary discusses the imposition of penalty for failure to comply with orders of Appellate Tribunal by allottee. Therefore, the decree holder is claiming interest and penalty under the wrong provision of law.

That the prayer clause of the execution petition is traversed hence, denied.

PRAYER

In the facts and circumstances mentioned herein above, the respondent/ judgment debtor most respectfully prays to this Hon'ble Court that:

- i. the award dated 12.09.2023 passed by this Ld. Authority may kindly not be ordered to be executed till the time of filing of the proposed appeal;
- ii. the present execution proceedings be deferred for a period of three weeks in as much as the judgment debtor proposes to prefer an appeal before the Ld. Appellate Tribunal in the interregnum; and
- iii. Contemporaneously granting to the respondent/judgment debtor such other or further relief/s as this Ld. Authority deem fit, proper and just in the facts and circumstances of the present case.

3. REPLY TO THE OBJECTIONS OF JUDGEMENT DEBTOR ON PRELIMINARY SUBMISSIONS:-

In reply to the preliminary submissions of paragraph no. 2 it is stated by the DH that the para pertains to authority to file reply, the same is subject matter of administrative function of the judgment debtor company, the decree holder is not aware of the same. The paragraph no. 3 of the reply/objections of judgment debtor is denied by the DH, by mentioning that there is no infirmity in the execution petition which warrants submission of objections.

REPLY TO THE OBJECTIONS FILED BY THE JUDGEMENT DEBTOR ON MERITS:-

- 1 That paragraph no. I is hereby admitted to the extent that the decree holder has received offer of possession dated 26.02.2024 and 23.05.2023 for Flat no. PWD/JACRANDA-C/509 and PWD/JACRANDA-C/413 respectively. The decree holder has made full and final payment towards Flat no. 413, as noted in the paragraph 8 of order dated 12.09.2023 (Annexure-I of original execution petition) however the judgment debtor has not handed over possession even now, the decree holder approached the judgment debtor time and again to handover the possession but despite various requests the judgment debtor refused to do so on the pretext of pendency of litigation. With respect to Flat no. 509, the decree holder is ready and willing to make any pending payment.
- 2 That paragraph no. II has been replied by the DH, as it pertains to plan of action of judgment debtor to file appeal in future, decree holder has no knowledge of the same however; this objection of judgment debtor deserves to be out rightly rejected. It is mentioned by DH that the limitation period for filing appeal has already lapsed; the order dated 12.09.2023 passed by this Learned Authority has reached finality. This objection of judgment debtor is not sustainable on this ground alone.

3 That the paragraph no. III is vehemently denied by the DH and further mentioned that the decree holder has not invoked any wrong provisions of law. The prayer clause of the execution petition is hereby reproduced for kind perusal:-

"RELIEF SOUGHT"

1. To get the final order dated 12.09.2023 passed by this learned authority executed through the Hon 'ble Authority.

"17. Relief.- B. The respondent is directed to pay the interest for delayed possession, at the SBI highest marginal cost of lending rate plus 2% as prescribed under Rule 15 of the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017 to the complainants with respect to flat no 509. The present highest MCLR of SBI is 8.7 % hence the rate of interest would be 8.7+2 % i.e. 10.7% per annum on the amount paid by the complainant i.e. Rs. 14, 46, 153/- for every month of delay from the due date of possession i.e. 20. 10.2020 till the date when valid offer of possession is made.

C. The respondent is directed to pay the interest for delayed possession, at the SBI highest marginal cost of lending rate plus 2% as prescribed under Rule 15 of the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017 to the complainants with respect to flat no 413. The present highest MCLR of SBI is 8.7 % hence the rate of interest would be 8.7+2 % i.e. 10.7% per annum on the amount paid by the complainant i.e. Rs. 14, 46, 153/- for every month of delay from the due date of possession i.e. 20. 10.2020 till the late of offer of possession was made i.e. 23.05.2023.

D. The arrears of interest on delayed possession accrued from 20.10.2020 till the date of passing of this order i.e. 12.09.2023 shall be paid to the complainant by respondent within 60 days

from the date of passing of this order and thereafter in the case of Flat No. 509 monthly payments of interest till handing over of possession shall be paid before 10th of each subsequent month.

E. As the offer of possession has already been made qua Flat no. 413 on 23.05.2023 therefore the complainant shall take the possession of the apartment within 30 days of the passing of this order. The respondent is directed to hand over possession of the Flat no. 413 to the complainant within time granted.

2. That as ordered by the Learned Authority the respondent Judgment Debtor is liable to pay the afore-stated calculated amount. The same may be paid to the decree holder by way of these modes of execution:

I. Recovery of amount.

II. Delivery of Possession of Flat.

III. Further for Flat no. 413, the offer of possession was made on 23.05.2023, however the judgment debtor has still not handed over possession, interest may be granted till the possession is handed over.

IV. Any other mode that the Learned Authority deems fit.

3 That it is further prayed that Learned Authority may also take severe action against the respondent/judgment debtor for not complying with the final order dated 12.09.2023 of this Learned Authority, by way of COSTS, PENALTY, ARREST, ATTACHMENT, SALE OR ANY OTHER WAY THAT THIS AUTHORITY MAY DEEM FIT:"

Nevertheless, it is a settled principle of law that even if wrong provision of law is invoked (which is not invoked in the present case) the same is merely a technical irregularity and it cannot be a ground to deny substantial justice. The execution petition read in its entirety unambiguously discloses the relief sought from this

Learned Authority. Hence, this objection of judgment debtor is not sustainable. It is further submitted that prayers of Decree Holder are rightly placed.

The prayer sought by Judgment Debtor is specifically denied. It is submitted that the judgment debtor is not entitled to any relief as prayed.

- i. The prayer no. (i) is misplaced and hereby denied, there is no provision under which this Learned Authority can be asked to not order execution of an order which has reached its finality on the ground that appeal will be preferred in future. The judgment debtor was to comply with the order dated 12.09.2023 by the month of November' 2023, whereas period of more than 4 months has passed, the judgment debtor has neither complied with the order nor he has preferred any appeal and thereby the order has reached its finality. As admitted by judgment debtor himself, the appeal is still in the process of being preferred and period of limitation has already elapsed. The Decree Holder cannot be denied relief or be asked to wait indefinitely on the ground that judgment debtor intends to prefer an appeal.
- ii. The prayer no. (ii) is misplaced, and vehemently denied on the grounds as stated above.
- iii. The prayer no. (iii) is denied, the judgment debtor is not entitled to any relief, whereas, heavy cost/penalty should be imposed upon the judgment debtor as per RERA Act, 2016 for failing to comply with order of this Learned Authority.

Therefore, it is, respectfully prayed, along with the prayers in the original execution petition, that this Learned Authority may:

1. Grant the execution in favour of the Decree holder and against the judgment debtor.

2. Reject the objections of judgment debtor with heavy costs.
3. Take appropriate action upon judgment debtor for failing to comply with orders of this Ld. Authority, specifically but not limited for not delivering possession of Flat no. 413 despite complete payment in May, 2023.
- 4 .Direct the judgment debtor to put the decree holder in possession of aforesaid flat in a time bound manner and subject to penalty upon failure to deliver.
- 5 Any other relief that this authority deems fit in the interest of justice, equity and good conscience.

4. ARGUMENTS:-

5. ARGUMENTS BY OBJECTOR/JUDGEMENT DEBTOR:

It was argued by the Ld. Counsel for the judgment debtor that the appeal is pending adjudication, which was initially listed on 12th December, 2025 before the Hon'ble Appellate Authority. The notice is issued by the Hon'ble Appellate Tribunal on application for condonation of delay returnable for 27th February, 2026. Unfortunately the person who was looking after legal affairs of the company has left the company on 1st of March. JD has not updated the Counsel arguing the matter so far.

It was submitted by the Ld. Counsel for the judgment debtor that keeping in view the above mentioned facts this Authority in exercise of power vested under the various provisions of the Act, Rules and Regulations issued following orders and directions :-

The complaint is hereby allowed. The respondent is directed to pay the interest for delayed possession at the SBI Highest

Marginal Cost of lending rate + 2 % as prescribed under Rule 15 of the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017 to the complainant. There will be difference of amount. Underline principal of this judgment is that the JD was required to give him the offer of possession apart from the interest component, which has been handed over in the month of October 2024. So far this payment of interest for delayed possession and other area of interest component is concerned, this order can further be carried in the appeal. So the mandate has been carved out under Section 43(5)of the RERD Act. The entire amount stands deposited in the registry of this Ld. Authority. Though, it has not been directly paid or deposited in the account of DH/complainant but the last penny has been deposited in the registry. We have complied with the mandate as per Section 43(5) because there is no escape from that.

The Ld. Counsel for the judgment debtor further argued that the arrears is for the handing over the possession. Second line of arguments would be that, DH are also claiming interest under Section 68 of RERD Act. Section 68 warrants penalty for failure to comply with the orders of the Appellate Tribunal by allottee not by the promoter. The claim that DH is seeking has been filed under a wrong provision. Rather it should have been under Section 63, Penalty for failure with order of Authority by promoter. Thirdly, JD read section 17 of the RERD Act which is reproduced as under:

- (1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the

allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

- (2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate.

The Ld. Counsel for the judgment debtor stated that he has also shared the official format on which he was able to lay his hands upon in consonance with which conveyance deed or sale deed has to be executed in the across the length and breadth of the State of Himachal Pradesh. Ld. Counsel further asked this Authority to have a look at clause 6 of the sale deed. That the seller hereby further declares land hereby sold is free from all encumbrances, lien charge, mortgage lease. So, as long as there is question regarding the settlement of the claims of the petitioner, our hands are tight, we cannot enter into either on conveyance

deed or sale deed. Ld. Counsel also read Section 18 of the RERD Act which is reproduced as under:

Return of amount and compensation (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

The Ld. Counsel for the JD further argued that they have handed over the possession, interest component stands deposited in the registry of this RERA. This provision nowhere mentions that JD is even required to enter into sale deed with the complainant/allottee.

The Ld. Counsel for the judgment debtor stated that Section 18 warrants that handing over is required. How we can enter into a sale deed when settlement of claims is a pre-requisite. Claims are yet to be settled.

The Ld. Counsel for the judgment debtor stated that handing over the possession cannot be illegal as per the mandate of Section 18 which warrants that JD is required to hand over the physical possession. Now as far as conveyance deed is concerned that has to be in proportionate to the payment plan. We also have to strict to, the terms and conditions embodied in the sale agreement and we are also required to strict or adhere to the payment plan. DH is yet to settle the claim. DH is yet to pay maintenance charges,

who is in possession. DH is yet to enter into maintenance agreement with the third party. Section 19 of RERD Act provides RIGHTS AND DUTIES OF ALLOTTEES. This does not specify on the developer to execute a sale deed.

The Ld. Counsel for the judgment debtor stated that as long as there is appeal pending consideration before the Hon'ble Appellate Authority till then we will have to crawl out of the format of the sale deed which has been provided by the state government. Section 19(6) of RERD Act provides that Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

During the course of hearing the Authority asked the question to the judgment debtor that, is there completion certificate? The Ld. Counsel for the judgment debtor stated that "no", that's why I opened my arguments with the statement that the person who was handling the legal affairs of the company he is already left on 1st of March, 2026 and I have not been given any update, neither regarding completion certificate. This is fact that there is no stipulation which is required that we have to have conveyance or sale deed before putting them into possession. If there is sale deed then DH is to fulfil his part of the bargain. DH might be willing and ready. The facts remain that there is an appeal and even the order

dated 12th of November,2023 which is under execution also does not direct us to execute or enter into a sale deed with the allottee. It only restricts itself to the interest for delayed possession, arrear of interest and possession. But nowhere stipulates, there are categorically directions, which has been issued to us to enter into sale deed.

6. ARGUMENTS BY DECREE HOLDER:-

The Ld. Counsel for the decree holder stated that the sale deed should be executed in his favour, but the JD is saying that sale deed cannot be executed. DH is entitled for delayed possession .DH has further mentioned that 5% payment is pending for the reason that the JD is denying for execution of sale deed and DH is ready to make payment of pending amount even today also. JD has not given the receipts of the payments made by me so far.

That during Execution proceedings the JD has handed over the possession of flat no.PWD/JACARANDA-C/510 on 5th floor in the project Omax Parkwood-I situated at Baddi, distt Solan has been handed over to Sh. Mohit Goyal. The possession of the same has also been acknowledged by the respective party on 03.09.2025. In view of this on 12th September, 2025 the Authority passed the order that, the liability for delayed possession ceases on the date of handing over the possession.

7. FINDINGS:-

We have heard the Ld. Counsel for the parties, carefully considered the objections filed by the Judgment Debtor, the reply filed by the decree holder to the objections filed by the judgment debtor, rejoinder filed by the Decree Holder, the execution petition and the final order dated 12.09.2023 sought to be executed. After having analyzed the submissions of the parties, the Authority is required to consider:

A. Whether the respondent/ Judgment Debtor had honoured the directions contained in the aforesaid order, passed by this Authority on 12.9.2023?

B. Whether the objections raised by the Judgement Debtor carry sustainability in view of the facts emerged during the adjudication of the matter?

Before looking into this aspect, it is apt to consider the relief sought by decree holder and the scope of executing court in execution proceeding at this stage. It is a settled position of law that the jurisdiction of an executing court or authority is confined strictly to execution of the decree as it stands and it cannot go behind the decree, even if the decree is alleged to be erroneous on facts or in law. The Hon'ble High Court of Himachal Pradesh in **Nalagarh Dehati Cooperative Transport Society v. Suraj Mani, 1976 Shimla Law Journal 172**, held that the executing court cannot go behind the decree even if erroneous on facts or law. Similarly, **the Hon'ble Supreme Court in Rajasthan Financial Corporation v. Man Industrial Corporation Ltd. (2003) 7 SCC 522 and Rameshwar Das Gupta v. State of U.P. (1996) 5 SCC 728** reiterated that execution courts must take the decree according to its tenor. Most authoritatively, in **Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman (1970) 1 SCC 670**, it was laid down that even an erroneous decree remains binding unless set aside in appeal or revision. Further, 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 10 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".

Further, the **Hon'ble Supreme Court in Chakardhari Surekha vs. Prem Lata Surekha through SPA & Ors, Civil Appeal No. 11840/2025 @ SLP (C) No/20480 of 2025**, observed as under: **"6. the question of executability of the award can be gone into by the Execution Court in accordance with law while addressing objections as and when raised. However, it would not be proper for the Execution Court to defer consideration of the execution application and the objections thereto only because an appeal is pending under Section 37 when there is no interim order operating against the award against which objection under Section 34 of the Act stands rejected.** In view of the above, we deem it appropriate to dispose of this appeal by observing that subject to any interim order passed in the appeal pending under Section 37 of the Act, the Execution Court shall be free to proceed with the execution of the award in accordance with law. Needless to observe that if any objection is raised as regards executability of the award, the same shall be addressed in accordance with law after giving opportunity of hearing to the parties concerned."

Further, in the matter involving, **M/s Shree Chamundi Mopeds Ltd., vs Church of South India Trust Association** the Hon'ble Supreme Court examined several critical issues related to the

execution of the decree. The decree holder 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.*

This Authority is also guided by the judgment passed by the Hon'ble Supreme Court in case of **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.

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 which 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.

Applying the aforesaid settled legal principles, this Authority finds that though an appeal against the order dated 12.09.2023 has been filed, there is no stay order issued by the Ld. Appellate Tribunal. It is admitted position that the order dated 12.09.2023 remains operative and has not been stayed by the Hon'ble Real Estate Appellate Tribunal. From the aforesaid judgment passed by the Hon'ble Supreme Court, it can be concluded that mere filing of an appeal, particularly when the same is stated to be pending registration along with an application for condonation of delay, does not operate as an automatic stay on execution of the decree. The executing authority is bound to proceed with execution, unless restrained by a specific stay order passed by the Ld. Appellate Tribunal. It is also fact that the amount deposited was only to fulfill the statutory pre-condition for filing an appeal. Execution proceedings must continue passing through various

stages in a time bound manner, failing which the entire exercise by decree holder in obtaining the decree would be rendered futile and the Execution proceedings cannot be kept in abeyance on such grounds. The possession can be valid, if the sale deed is executed between the party, which is missing in this case. The sale deed is not executed in the case so far. The possession of a unit to the decree holder by the judgment debtor cannot be said to be lawful without having sale deed. The JD is hitting the most basic foundation of the RERD Act by saying that the promoter is not liable to execute the sale deed. In view of the settled legal position laid down by the Hon'ble High Court and the Hon'ble Supreme Court in the aforesaid judgments, this Authority holds that the objections filed by the Judgment Debtor are beyond the scope of execution, legally untenable, devoid of merit and deserve to be dismissed.

Since JD has handed over the possession of flat no.PWD/JACARANDA-C/509 on 5th floor to the Madhu Bala on 03.09.2025 and acknowledged by the party on 03.09.2025. Similarly, JD has also handed over the possession of flat no.PWD/JACARANDA-C/413 on 4th floor in the project Omax Parkwood-I situated at Baddi, distt Solan to the Madhu Bala on 25.08.2025 which is acknowledged by the DH on 25.08.2025.

The judgment debtor is under legal obligation to refund the decreed amount as per order dated 12.09.2023. Further, the Authority, in pursuance to the provisions, contained under section 40 of the RERD Act, 2016 as well as Rules/ Regulations made there under, directs Judgment Debtor to:

- A. Deposit the remaining decretal amount of Rs. 14, 46,153/- including interest @ 10.7% per annum for every month of delay from the due date of possession i.e. 20.10.2020 to

03.09.2025 and to comply with the order of this Authority within a period of 30 days from the date of this order.

- B. Deposit the remaining decretal amount of Rs. 9,90,000/- including interest @ 10.7% per annum for every month of delay from the due date of possession i.e. 20.10.2020 to 25.08.2025 and to comply with the order of this Authority within a period of 30 days from the date of this order.
- C. JD to file the affidavit containing list of assets of judgment debtor 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 JD to comply with the aforesaid directions within the prescribed period, the same would entail the JD for further initiation of coercive action by the Authority as per the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Regulations framed thereunder.



R.D. DHIMAN
(CHAIRPERSON)



VIDUR MEHTA
(MEMBER)