

REAL ESTATE REGULATORY AUTHORITY

HIMACHAL PRADESH

Execution petition no. PET2024004

In the matter of :-

- 1 Sh. Dalip Kalra son of Late Sh. Madan Mohan Kalra, resident of House no.1139, sector 7 Karnal, Haryana.
- 2 Smt. Karuna S Kalra wife of Sh. Dalip Kalra, resident of House no.1139, sector 7 Karnal, Haryana.

..... Decree holder(s)

Versus

- 1 Ahlawat Developers and Promoters, Khasra no. 602-608,610-611, Malku Majra(Opposite Dr. Reddy Laboratories) Tehsil Baddi, Solan, Himachal Pradesh 173205 and also office at DSS 320, 1st floor, Sector-9, Panchkula-134109
- 2 Jagjit Singh Ahlawat, (Partner), Ahlawat Developers and Promoter, resident of house no. 46, sector 10, Panchkula 13409 Haryana

..... Judgment debtor

Present: Ms. Shikha vice Ms. Manish Maggu, Ld. Counsel for
decree holder(s)
Sh. J.S. Ahlawat for judgment debtor(s) in person

Date of hearing: 14th July,2025

Date of pronouncement of order: 8th August,2025

Interim Order

Coram: Chairperson and Members

1. The present execution, filed by Sh. Dalip Kalra, son of late Madan Mohan Kalra aggrieved by the acts of judgment debtor had filed a complaint bearing number HPRERA2024004/C for refund of the amount paid along with statutory interest for not offering the possession of apartment no. 203, measuring 1575 sq feet (super area) on second floor in Tower no. A-3 in the project "Himachal One

Baddi" situated in revenue estate Village Malku Majra, Pinjore, Nalagarh, Tehsil Nalagarh Distt. Solan. This Authority vide its final order dated 14.06.2024 while allowing the complaint of the decree holder(s) passed the following order:-

"Keeping in view the abovementioned facts, this Authority in exercise of powers vested in it under various provisions of the Act issues the following orders / directions:

- i. The Complaint is allowed. The respondent promoter is directed to a refund of Rs 22,74,563/- (Twenty Two Lakhs, Seventy Four Thousand, Five Hundred and Sixty Three only) along with interest at the SBI highest marginal cost of lending rate plus 2 % as prescribed under Rule 15 of the Himachal Pradesh Real Estate (Regulation & Development) Rules, 2017. The present highest MCLR of SBI is 8.85 % hence the rate of interest would be 8.85 % + 2% i.e. 10.85 %. It is clarified that the interest shall be payable by the respondents from the dates on which different payments were made by the complainant to the respondents till date the amount and interest thereon is refunded by the respondents.*
- ii. The refund along with interest is to be paid by the respondents/promoter to the complainant within 60 days from the date of passing of this order.*
- iii. For seeking compensation the complainant is at liberty to approach the Adjudicating Officer under Section 71 and 72 of the Act Ibid."*

The decree holders have filed the instant execution petition with the prayer that the decretal amount along with appropriate interest interms of the judgment passed by this Authority may kindly be released in its favour. As per the original calculation sheet appended with the execution, the total amount to be paid by the judgment debtor was stated to be Rs. 38,21,432/-.

2. The objections to this execution petition were preferred by the judgment debtor(s) wherein it was stated that the judgment debtor no. 2 J.S. Ahlawat have paid an amount of Rs. 8,00,000/- to the decree holder. An amount of Rs. 6,50,000/- was paid to him on 10.07.2017 through RTGS in the bank account of the complainant and another of amount of Rs. 1,50,000/- was also paid through demand draft no. 018450 on 14.07.2017 total amounting to Rs

8,00,000/-. The copy of proof of payments was appended as Annexure A-1. It was prayed that the judgment debtor is entitled to refund of Rs. 8,00,000/- paid to the complainant and the same may be adjusted against the decretal amount. It was submitted by the judgment debtor that after deducting the amount of Rs. 8,00,000/-, the judgment debtor is willing to refund the amount of Rs. 30,21,432/- in four equal instalments commencing from January, 2025.

3. Thereafter, an application for necessary amendment in the calculation sheet attached with execution application was filed by the decree holders and it was submitted that there was a mistake in the calculation sheet due to clerical and inadvertent error and the total amount to be paid by the judgment debtor in terms of the decree was Rs. 22,74,563/- as principal amount plus an interest of Rs. 38,21,432/- total amounting to Rs. 60,95,995/- The revised calculation sheet has also been placed on record.
4. Further, a reply (stated to be rejoinder) has also been filed by the decree holder wherein this fact of error in the calculation sheet has been brought on record. It has further been stated that the version or plea raised by the judgment debtor by way of filing the objections has already been taken by him in the reply to the main complaint and the Authority while deciding the main complaint did not grant any relief in this regard and therefore the judgment debtor is not entitled to refund of any amount. It was further argued that the executing court cannot go behind the decree.
5. This Authority has perused the record and heard the arguments advanced by both parties. It is of the considered opinion that the decree/order is unambiguous, and the contention of the judgment debtor(s) that a sum of ₹8,00,000/- has been paid to the decree holder(s) and is liable to be refunded—is liable to be rejected. This fact was specifically claimed by the judgment debtor(s) in their reply to the main complaint and the complainants in their rejoinder had denied the receipt of this Rs. 8,00,000/- and also stated that it has not been pleaded as to why this amount was paid by the respondent to the complainant. No relief with regards to this Rs. 8,00,000/- has been awarded by this Authority for want of substantive proof after giving thoughtful consideration to the entire issue. In the case of **Arunachala Mudali vs. Maragathammal** 1954 SCC ONLINE MAD 251, it was held that where in a case the relief is claimed but the decree is silent, the relief is deemed to have been refused. Similar observations were made by the Apex Court in the case of **Plasto Pack, Mumbai and Another vs. Ratnakar Bank Ltd.** (2001) 6 SCC

683, wherein it was observed that such prayers which are specifically made but not granted by the decree, would be deemed to have been refused and to that extent, the suit shall be deemed to have been dismissed. In this regard reference can be made to the judgment of the Honourable Supreme Court in **State Bank of India vs. Ram Chandra Dubey and ors.** 2001(1) SCC 73 wherein it has been held that relief must be deemed to have been denied when what is claimed is not granted. In other words, if a prayer is made but the same is not expressly granted in the proceedings, the same is deemed to have been refused.

It is therefore settled law that a relief prayed for in the complaint but not granted by the court is deemed to have been declined.

6. Further it is also the settled law that the executing Court can not go behind the decree and has to execute the decree as it stands. 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.

7. The relief granted by this Authority is absolutely clear wherein a refund of Rs. 22,74,563/- along with statutory rate of interest of Rs.

10.85 % has been awarded. It was further held in the main complaint that this interest is to be paid by the judgment debtor from the dates on which different payments were made by the complainant. Therefore, the objections filed by the judgment debtor deserves to be dismissed.

8. The judgment debtor(s) are required to pay the decretal amount along with up to date interest in terms of the decree. The matter is adjourned for making payment of the entire decretal amount failing which they are directed to file a list of assets interms of Order 21 Rule 40(2) read with Appendix V Himachal Pradesh Real Estate (Adjudication of Execution Petition) Regulations No. 3, 2020.


(Amit Kashyap)
MEMBER


(R.D. Dhiman)
CHAIRPERSON


(Vidur Mehta)
MEMBER