

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.497 of 2022

Date of Decision: 08.12.2022

M/s Vatika Limited, 7th Floor, Vatika Triangle, Sushant Lok,
Phase-I, Mehrauli, Gurugram Road, Gurugram-122002.

Appellant

Versus

Girdhari Lal son of Shri Jaynarayan, Resident of V.P.O.
Sarhaul, Tehsil and District Gurugram.

Respondent

CORAM:

Shri Inderjeet Mehta,	Member (Judicial)
Shri Anil Kumar Gupta,	Member (Technical)

Argued by: Shri Kamaljeet Dahiya, Advocate, Id. Counsel
for the appellant.

Shri S.K. Yadav, Advocate, Id. Counsel for the
respondent.

ORDER:

INDERJEET MEHTA, MEMBER (JUDICIAL):

Feeling aggrieved by the order dated 22.04.2022,
handed down by the learned Adjudicating Officer of Haryana
Real Estate Regulatory Authority, Gurugram, in Complaint
No.E/5903/669/2018, titled "Girdhari Lal vs. Vatika Limited",
vide which the arrest warrants were ordered to be issued

against the Directors of appellant/J.D., it has chosen to prefer the present appeal.

2. The respondent/Decree Holder had preferred a complaint no.669/2018 titled "Girdhari Lal vs. Vatika Limited", before the learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority'), claiming refund of the amount of Rs.1,12,79,700/-, which he had deposited with the appellant qua the plot/unit booked by him. Though, the said complaint was resisted by the appellant/JD by way of filing reply, but the relief of refund was allowed to the respondent/Decree Holder vide order dated 10.01.2019 and relevant portion of the said order is as follows:-

"(i) The respondent is directed to refund the entire amount paid by the complainant along with prescribed rate of 10.75% p.a. from the date of each payment within a period of 90 days from the issuance of this order."

3. Since, in spite of the aforesaid order, the said amount was not paid to the respondent/decree holder, so, he preferred complaint No.E/5903/669/2018, titled "Girdhari Lal vs. Vatika Limited"; to execute the aforesaid order dated 10.01.2019.

4. During the execution proceedings, learned Adjudicating Officer of the learned Authority passed the impugned order dated 22.04.2022, which is as follows:-

“On previous date, Commissioner of Police, Gurugram was directed to get the directors of JD arrested and the same were to be produced before this forum till today. Process is shown to have served in the office of Commissioner of Police, Gurugram. But there is no report about execution of arrest warrants. Issue show cause notice to Commissioner of Police, Gurugram as why contempt of court proceedings be not initiated against her/him. Reply, if any, be filed till next date.

At the same time, arrest warrants be issued again against directors of JD for next date.

To come up on 12.07.2022 for further proceedings.”

5. The appellant/JD felt aggrieved, hence, the present appeal.

6. We have heard learned counsel for the parties and have meticulously examined the record of the case.

7. Learned counsel for the appellant has submitted that the impugned order dated 22.04.2022 is without jurisdiction as the learned Adjudicating Officer of the learned Authority is not legally empowered to execute the order dated

10.01.2019 handed down by the learned Authority in Complaint No.669/2018 titled "Girdhari Lal vs. Vatika Limited", vide which the complaint filed by the respondent for refund of the amount of Rs.1, 12, 79,700/- was allowed along with interest at prescribed rate. Further, it has been submitted that the order dated 28.07.2021 (Annexure A2) available at page no.60 of the paper-book, passed by the learned Authority delegating powers, to execute its order for refund, to the learned Adjudicating Officer, is beyond the jurisdiction of the Authority. Thus, the impugned order is apparently illegal, without jurisdiction and is liable to be set aside. Reliance has been placed upon citation ***Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. 2022(1) R.C.R. (Civil) 357.***

8. Learned counsel for the appellant has also submitted that two other execution petitions bearing no. E/5771/667/2018 and No.E/5901/668/2018, were also preferred by the respondent/D.H. and by paying the due amount to the respondent/D.H., the same have been fully satisfied. Further, he has submitted that the appellant is ready to pay the decretal amount in the present execution subject to the correction of the calculation of recoverable amount and the appellant cannot be forced to pay amount in

excess of the authenticated payable amount. With these submissions, learned counsel for the appellant has requested for acceptance of the appeal and setting the impugned order.

9. Per contra, learned counsel for the respondent has submitted that the decretal amount, as has been sought by way of execution, has not been received by the respondent. Further, it has been submitted that the learned Authority is legally competent to delegate its powers to the learned Adjudicating Officer to execute its order for refund, in view of the provision of Section 81 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'), which empowers the Authority to delegate any of its powers and functions, other than the power to frame regulation under Section 85, to any member or officer of the Authority (or any other person), subject to any condition specified in the order. Learned counsel for the respondent has submitted that there is no illegality and irregularity in the impugned order handed down by the learned Adjudicating Officer and the present appeal deserves to be dismissed.

10. We have duly considered the aforesaid submissions.

11. At the outset, it is pertinent to mention that there is no dispute to the proposition of law as laid down in **Newtech Promoters'** case (Supra), wherein the Hon'ble Apex Court has

laid down that when there is a dispute with respect to the refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the Regulatory Authority which has power to examine and determine the outcome of the complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the Adjudicating Officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act.

12. Undisputedly, the order dated 10.01.2019, which has been sought to be executed by way of execution by the respondent/D.H., has been handed down by the learned Authority and the respondent/D.H. has been held entitled to the refund to the tune of Rs.1,12,79,700/- with interest at the prescribed rate of 10.75% per annum from the date of receipt of payments till realisation of the amount.

13. To authorise the learned Adjudicating Officer to execute its order dated 10.01.2019, the learned Authority on 28.07.2021 had handed down the following order (Annexure A2) available at page no.60 of the paper-book:-

“ The present execution petition relates to refund of the deposited amount with the JD. The relief sought by the decree holder is to be dealt with by the Adjudicating Officer. File be transferred to the Adjudicating Officer for appropriate action.

Both the parties are directed to appear there on 26.08.2021.”

14. The legality and validity of this aforesaid order dated 28.07.2021, has also been assailed by learned counsel for the appellant by submitting that only learned Authority which had passed the order for refund, was legally competent to execute its order. The answer to this aforesaid submission of the learned counsel for the appellant has been provided by our own Hon'ble High Court in its decision dated 17.08.2022, handed down in **CWP No.7738, 7750 and 9942 of 2022**, lead case titled as ***M/s International Land Developers Private Limited vs. Aditi Chauhan and Others***, and the relevant part of the said order is as follows:-

“99. Again it is to be noticed that though learned senior counsel for the petitioner argued that the office order dated 16.03.2022 passed by the Authority, thereby delegating its powers upon the Adjudicating Officer to hear an execution application filed by respondent no.3 herein (complainant), 74 of 80 is beyond the jurisdiction of the Authority and consequently the order passed by the AO in such

execution proceedings on 30.03.2022 is also without jurisdiction; yet, we agree with learned counsel for the respondent Authority that with Section 81 of the Act empowering the Authority to delegate any of its powers and functions, other than the power to frame regulations under Section 85, to any member or officer of the Authority (or any other person), subject to any condition specified in the order, such delegation vide the said order dated 16.03.2022 (Annexure P-26) cannot be held to be beyond such power conferred upon the Authority.

It is to be observed that execution of orders is a function that can be effectively carried out by the Adjudicating Officer, especially with Section 71 of the Act stipulating that such officer would be a person who is or has been a District Judge. Thus, very obviously such Adjudicating Officer would be completely familiar with the manner of execution of a decree issued or order passed in civil proceedings; and consequently would be the appropriate person to execute his own orders as also those of the Tribunal/ Authority under the Act.”

15. Thus, in view of the aforesaid observations of the Hon'ble High Court, the learned Adjudicating Officer, who has handed down the impugned order, is legally entitled to pass such order.

16. In para no.IX at page 19 of the appeal, the appellant has specifically pleaded that it is ready to pay the decretal

amount of the present execution provided that calculation of amount payable by the appellant is duly rectified. Similar, stand has been taken by the appellant in para no.X at page 20 of the appeal, wherein the appellant has again pleaded that it is not running out of its obligation for payment of the decretal amount of execution No.E/5903/669/2018, but has pleaded for correction of the calculation of recoverable amount, as the appellant cannot be forced to pay/refund amount in excess of authenticated payable amount.

17. Thus, in view of the aforesaid pleadings, it is explicit that so far the appellant has not paid even a single penny to the respondent/D.H. in execution No.E/5903/669/2018, which is pending before the learned Adjudicating Officer.

18. Regarding the stand taken by the appellant that correction be made in the calculations of recoverable amount, as has been sought to be realized by the respondent/D.H., it is suffice to say that the appellant is at liberty, if so advised, to move an application before the learned Adjudicating Officer in this regard. However, the fact remains that, so far, neither any amount has been paid by the appellant to the respondent/D.H. nor any amount has been deposited with the learned Adjudicating Officer during the pendency of the present execution.

19. Thus, in view of these facts and circumstances, there appears to be no illegality and irregularity in the impugned order dated 22.04.2022 handed down by the learned Adjudicating Officer and the present appeal preferred by the appellant deserves to be dismissed and is accordingly dismissed.

20. The copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority.

21. File be consigned to the record.

Announced:
December 08, 2022

Inderjeet Mehta
Member (Judicial)
Haryana Real Estate Appellate Tribunal,
Chandigarh

Anil Kumar Gupta
Member (Technical)

CL