

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.91 of 2021

Date of Decision: 23.12.2022

Raheja Developers Limited, W4D, 204/5, Keshav Kunj
Cariappa Marg, Western Avenue, Sainik Farms, New Delhi-
110062.

Appellant

Versus

1. Manohar Lal Kapur
2. Mrs. Usha Kapur

Both Residents of Flat No.258, AFNO Enclave Sector-7,
Plot No.11, Dwarka, New Delhi-110075.

Respondents

CORAM:

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

Argued by: Ms. Navneet Kaur, Advocate, Learned Counsel
for the appellant.

None for respondents.

ORDER:

INDERJEET MEHTA, MEMBER (JUDICIAL):

Feeling aggrieved by the order dated 27.01.2021,
handed down by the learned Haryana Real Estate Regulatory
Authority, Gurugram, (hereinafter called 'the Authority'), in

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Execution No.4367 of 2020, titled “Mr. Manohar Lal Kapur and Anr Vs. M/s Raheja Developers Limited”, vide which, Escrow Account of the appellant/Judgment Debtor (for brevity ‘JD’) as mentioned in para no.8 of the impugned order, was ordered to be attached to realise the decretal amount payable to the respondents/Decree Holders (for brevity (DHs), the appellant/JD, has chosen to prefer the present appeal.

2. The respondents/DHs had preferred a complaint no.749 of 2019 titled “Mr. Manohar Lal Kapur and Anr Vs. M/s Raheja Developers Limited”, claiming the relief of possession of the allotted flat as well as interest on the delayed possession. Though, the said complaint was resisted by the appellant/JD by way of filing reply, but the said relief was allowed to the respondents/DHs, vide order dated 18.02.2020, and relevant portion of the said order is as follows:-

- “(i) The respondent is directed to pay interest at the prescribed rate of 10.20% p.a. for every month of delay from the due date of possession i.e. 06.09.2012 till the offer of physical possession;*
- (ii) The arrears of interest accrued so far shall be paid to the complainants within 90 days from*

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the date of this order and subsequent interest to be paid by 10th day of each subsequent month;

- (iii) The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;*
- (iv) The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.*
- (v) Interest on the due payments from the complainants shall be charged at the prescribed rate @ 10.20% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.*
- (vi) Complaint stands disposed of.*
- (vii) File be consigned to registry."*

3. Since, in spite of the aforesaid directions, the appellant/JD did not comply with the said order, so, the respondents/DHs preferred Execution No.4367 of 2020, titled "Mr. Manohar Lal Kapur and Anr Vs. M/s Raheja Developers Limited", to execute the aforesaid order dated 18.02.2020.

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4. During the execution proceedings, the learned Authority handed down the impugned order dated 27.01.2021, and the relevant portion of the said order is as follows:-

“8. The Authority is informed of the bank account of the judgment debtor as per details given below:

<i>Account No.</i>	<i>Name of account holder</i>	<i>Type of account</i>	<i>Name of Bank</i>	<i>Branch</i>	<i>IFS Code</i>
017105008614	M/s Raheja Developers Limited	Escrow Account	ICICI Bank Limited	ICICI Bank Ltd. E-30, Saket New Delhi-110017	ICIC0000171

9. *While exercising powers under Order XXI Rule 30 of the Code, the Authority hereby orders attachment of the above said bank account and directs the bank manager to remit the decretal amount in favour of the decree holder by way of producing demand draft before the Authority within 15 days failing which the bank manager is directed to explain the reasons for non-compliance.”*

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

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

7. Learned counsel for the appellant has submitted that the learned Authority vide impugned order has attached

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the 'Escrow Account' of the project. Further, it has been contended that the amount lying in the 'Escrow Account' can only be used for the construction of the project and not for the satisfaction of any order or decree passed in favour of the allottees/respondents. Further, it has been contended that the learned Authority had no jurisdiction to execute the order passed by it, like a decree of Civil Court. Thus, the impugned order suffers from material legal infirmities and deserves to be set aside.

8. During the pendency of the appeal, the respondents/DHs had submitted the written synopsis and as per the submissions made therein, the learned Authority, which had passed the order dated 18.02.2020, is legally empowered to execute the said order, as a Civil Court decree. Thus, it was submitted in the written submissions that the impugned order dated 27.01.2021 is perfectly legal and valid and the present appeal deserves to be dismissed.

9. We have duly considered the aforesaid submissions.

10. To appreciate the contention that the learned Authority had no jurisdiction to execute the order passed by it, like a decree of Civil Court, first of all, let us have a look at Rule 27 of the Haryana Real Estate (Regulation and

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Development) Rules, 2017, (hereinafter called 'the Rules'), and the same is as follows:-

“Enforcement of order, direction or decision of adjudicating officer, Authority or Appellate Tribunal read with section 40 of the Real Estate (Regulation and Development) Act, 2016;

(1) Every order passed by the adjudicating officer or the Authority or the Appellate Tribunal, as the case may be under the Act or rules and the regulation made thereunder, shall be enforced by an adjudicating officer of the Authority or Appellate Tribunal in the same manner as if it were a decree or a order made by a civil court in a suite pending therein; and it shall be lawful for the adjudicating officer or the Authority or the Appellate Tribunal, as the case may be, in the event of its inability to execute the order, send such order to the civil court, to execute such order.”

11. Our own Hon'ble High Court in its decision dated 17.08.2022, handed down in **CWP No.7738, 7750 and 9942 of 2022 (O&M)**, lead case titled **“M/s International Land Developers Private Limited Vs. Aditi Chauhan and others”**, while dealing with Section 40 of the Real Estate (Regulation and Development) Act, 2016, (hereinafter called 'the Act'), and Rule 27 of the Rules, in para no.91 has observed as under:-

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“91. To repeat yet again, sub-section (1) of Section 40 stipulates that the manner of recovery of payment of interest, penalty and compensation, may be prescribed (by rules) for recovery as an arrear of land revenue and does not postulate any other method of such recovery; however sub-rule (1) of Rule 27 empowers the AO/Authority/Tribunal to enforce any order passed by it under Section 40 (without specifying any particular sub-section thereof), as if it were a decree or an order made by a civil court in a suit pending before it.”

12. From these aforesaid observations, it is explicit that sub-rule (1) of Rule 27 of the Rules, empowers the Adjudicating Officer, Authority or the Appellate Tribunal, to enforce any order passed by it under Section 40 of the Act, as if it were a decree or an order made by a Civil Court, in a suit pending therein. Thus, the learned Authority which had handed down the order dated 18.02.2020, is legally empowered to execute the said order, like a decree of Civil Court.

13. Undisputedly, the learned Authority vide para nos.8 and 9 of the impugned order dated 27.01.2021, which has been referred above, has attached the ‘Escrow Account’ of the appellant/JD, as detailed and described in para no.8.

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14. This Tribunal on 12.04.2021, while issuing notice of the present appeal, had passed the following order:-

“ Issue notice of the present appeal as well as the stay to the respondents for 30.04.2021.

Till then, if the amount/money has been received from the escrow account by way of attachment, the disbursement of the said amount to the respondents shall remain stayed.”

15. Though, the learned Authority in the impugned order has mentioned the account of the appellant/JD to be ‘Escrow Account’, but in fact, there is no reference of the word ‘Escrow Account’ in the Act. In fact, as per Section 4(l)(D), every promoter at the time of making an application to the Authority for registration of the real estate project is required to give a declaration, supported by an affidavit, stating -

“(D) that seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project”.

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In this aforesaid 'Separate Account' to be maintained in a scheduled bank by the promoter, 70% of the amount realised for the real estate project, from the allottees is deposited to meet the expenses of cost of construction and the land cost, and it has to be used only for that purpose. In fact, this separate account, in general and for all practical purposes, is known and referred as 'Escrow Account'.

16. Now, the question to be determined is whether in the given facts and circumstances of the present case, the amount of the appellant/JD lying in the 'Separate Account' (Escrow Account) can be utilized to make the payment of Rs.78,41,559/-, as mentioned in para no.3 of the impugned order, to which the respondents/DHs are entitled.

17. To find an answer to this aforesaid question, let us have a look at some of the facts and circumstances of the present case.

18. The learned Authority in para no.10 of the impugned order has observed as under:-

"10. In case, the bank account is incorrect or the balance available in the bank account is insufficient to satisfy the decretal mount, the judgment debtor is directed to appear before the Authority to be orally examined as to whether

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the judgment debtor has any and what other property or means of satisfying the decree and the Authority further orders for attendance and examination of such judgment debtor and for the production of documents in support of such property/means exercising powers under Order XXI Rule 41 of the Code.”

19. In the interlocutory order dated 14.07.2021, in this appeal, it is specifically observed that Ld. Counsel for the appellant has undertaken before us that in compliance of para no.10 of the impugned order, the Managing Director of the appellant will appear before the ld. Authority on the next date of hearing fixed before the ld. Authority i.e. 29.07.2021 to be orally examined by the ld. Authority with respect to the assets owned by the appellant.

20. Further, in the interlocutory order dated 19.08.2021, in this appeal, it has been observed that learned counsel for the respondents has placed on file the copy of the order dated 29.07.2021, which shows that one Shri Adil Aftab, Senior Vice President of the appellant-company had appeared before the learned Authority instead of the Managing Director. It further comes out from the order dated 29.07.2021 passed by the learned Authority that the learned Authority has given sometime for settlement of the matter, but, when the case was

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called again at 4:00 P.M., none had turned up on behalf of the JD i.e. the appellant. It shows that the appellant has deliberately and intentionally fled away from the proceedings of the learned Authority. In the interest of justice, before passing any drastic order, one more opportunity was provided to the Managing Director of the appellant-company to appear before the learned Authority, in order to honour the undertaking given before this Tribunal on 14.07.2021, on the next date fixed in the execution proceedings i.e. 30.09.2021. This Tribunal also observed that it is made clear that if the Managing Director of the appellant-company fails to appear before the learned Authority on that day, the interim relief granted by this Tribunal dated 12.04.2021 shall automatically stand vacated.

21. Further, in the interlocutory order dated 05.10.2021, we observed that both the learned counsel for the parties have stated that the Managing Director of the appellant-company, who was ordered to appear before the learned Authority, Gurugram, on 30.09.2021 by our last order dated 19.08.2021, has not put up in appearance before the learned Authority and the learned Authority has further proceeded in the execution proceedings and now the execution proceedings are fixed for 22.10.2021.

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22. From the aforesaid facts and circumstances, the inevitable conclusion is that the Managing Director of the appellant-company, in utter disregard to the direction made by the learned Authority in para no.10 of the impugned order as well as the direction and the undertaking given before this Tribunal on 14.07.2021, till date, has not put up in appearance before the learned Authority. Thus, the interim stay granted to the appellant that the disbursement of the amount of 'Separate Account' (Escrow Account), to the respondents, shall remain stayed, in view of the act and conduct of the Managing Director of the appellant-company, stands vacated and the learned Authority is at liberty to realise the amount from the aforesaid 'Separate Account' (Escrow Account) of the appellant-company to satisfy the decretal amount to which the respondents/DHs are entitled by dint of order dated 18.02.2020. However, the learned Authority at the time of making disbursement of the amount of 'Separate Account' (Escrow Account), will keep in mind that the amount in this 'Separate Account' (Escrow Account) has been contributed by other allottees and while realising the decretal amount to the respondents/DHs, no injustice/loss is caused to the other co-allottees of the project.

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23. While issuing direction to the learned Authority for disbursement of the amount of 'Separate Account' (Escrow Account) of the appellant/JD, we are conscious of the fact that the amount of 'Separate Account' (Escrow Account) is to be only utilised for the construction of the project, however, this embargo is for the developer/promoter and not for the learned Adjudicating Officer, learned Authority and this Tribunal, who in the given facts and circumstances of the case can order for disbursement of the amount from the said account i.e. 'Separate Account' (Escrow Account).

24. In case, the learned Adjudicating Officer finds some difficulty in realising the decretal amount or the amount is found insufficient for realisation of the decretal amount, the learned Authority would proceed further in the execution application, which is pending before it in accordance with its observations made in its comprehensive order dated 27.01.2021, which has been sought to be impugned by way of present appeal.

25. As a sequel to the aforesaid discussion, we are of the considered view that the present appeal containing no merits deserves dismissal and is accordingly dismissed.

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26. Copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority for compliance.

27. File be consigned to the record.

Announced:
December 23, 2022

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

Anil Kumar Gupta
Member (Technical)

CL

Judgment-Haryana Real Estate Appellate Tribunal