BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.260 of 2022

Date of Decision: 08.02.2023

Landmark Apartments Private Limited through its authorised representative Mr. Chetan Dhingra, having its registered office at Plot No.65 Sector-46, Gurugram-122018.

Appellant

Versus

Santosh Chauhan Resident of House No.19/4, Dharam Colony, Palam Vihar Extension, Gurugram-122022.

Respondent

CORAM:

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

Argued by: Shri Shobit Phutela, Advocate, ld. Counsel for the appellant.

Shri Arun Sharma, Advocate, ld. Counsel for the respondent.

O R D E R:

INDERJEET MEHTA, MEMBER (JUDICIAL):

Feeling aggrieved by the order dated 15.03.2022, handed down by the learned Haryana Real Estate Regulatory Authority, Gurugram, (hereinafter called 'the Authority'), in Complaint No. E/6370/144/2018, titled "Santosh Chauhan Vs. Landmark Apartments Private Limited", vide which, the appellant/Judgment Debtor was directed to make payment of

Rs.8,71,605/- to the respondent/decree holder, it has chosen to prefer the present appeal under Section 44(2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act').

2. As back as in the year 2018, the respondent/decree holder had preferred a complaint no.144 of 2018 titled 'Santosh Chauhan vs. Landmark Apartments Private Limited, before the learned Authority, seeking refund of a sum of Rs.25,11,129/- along with interest. Though, the said complaint was resisted by the appellant/Judgment Debtor by way of filing reply, but the same was disposed of by the learned Authority vide order dated 14.12.2018 with the following observations:-

> *"29. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following direction to the respondent in the interest of justice and fair play:*
>
> *i. The respondent is directed to refund the entire amount paid by the complaint along with prescribed rate of interest @ 10.75% p.a. from the date of each payment till 14.12.2018 (date of disposal of complaint) to the complainant within a period of 90*

days. Interest component in a tabular form is given below –

Date of payment	*Principal amount paid*	*Interest payable on paid amount @ 10.75% p.a. from date of payment till 14.12.2018*
31.05.2012	*Rs.5,00,000/-*	*Rs.3,51,289.41*
05.07.2012	*Rs.10,00,000/-* *Rs.1,59,840/-*	*Rs.8,03,122.31*
04.08.2012	*Rs.5,00,000/-* *Rs.3,00,000/-*	*Rs.5,47,022.81*
14.08.2012	*Rs.51,289/-*	*Rs.34,919.74*
Total	*Rs.25,11,129/-*	*Rs.17,36,354.27*

30. The order is pronounced.

31. Case file be consigned to the registry."

3. To execute the said order dated 14.12.2018 handed down by the learned Authority, an execution petition no.E/6370/144/2018, was preferred by the respondent/decree holder and the same was disposed of by the learned Authority vide impugned order dated 15.03.2022 with the following concluding observations:-

"Hence, the JD is directed to make the payment of Rs.8,71,605/- to the decree holder before 31.03.2022 and submit a compliance report in this regard to the authority failing which the process for attachment of bank accounts would be initiated.

Matter to come up on 18.05.2022 for further proceedings."

4. Hence, the present appeal.

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

6. Learned counsel for the appellant/judgment debtor, while drawing the attention of this Tribunal towards the aforesaid order dated 14.12.2018 as well as the impugned order dated 15.03.2022, both handed down by the learned Authority, has submitted that the learned Authority has gravely erred in awarding future interest to the respondent/decree holder by way of impugned order, specifically when vide order dated 14.12.2018, the respondent/decree holder was only held entitled to the interest at the prescribed rate of 10.75% per annum from the date of each payment till 14.12.2018 (the date of disposal of the complaint) to the complainant within a period of 90 days. Further, it has been submitted that law is well settled that the Executing Court is strictly bound by the terms of the decree and cannot award interest beyond the period as mentioned in the said decree. Reliance has been place upon citations ***V. Ramaswami Aiyengar and others vs.Kailasa Thevar (AIR) 1951 SC 189***; ***Rameshwar Dass Gupta vs. State of UP and another (1996) 5 SCC 728*** and ***State of Punjab vs. Krishan Dayal Sharma (2011) 11 SCC 212***.

7. Learned counsel for the appellant/judgment debtor has also submitted that the appellant/judgment debtor has

already paid an amount of Rs.4,74,570/-, in excess to the amount which it was liable to pay to the respondent/decree holder and thus is entitled for refund of this amount of Rs.4,74,570/-. Thus, it has been submitted that the impugned order passed by the learned Authority suffers from material illegalities and irregularities and is liable to be set aside.

8. Per contra, learned counsel for the respondent/decree holder has submitted that as the appellant/judgment debtor failed to pay the due amount within 90 days of handing down of the impugned order dated 14.12.2018, so, the execution petition was filed by the respondent/decree holder on 27.05.2019 and thus, the learned Authority was justified in awarding the interest to the respondent/decree holder till the realisation of the amount.

9. We have duly considered the aforesaid contentions.

10. First of all, let the admitted facts of the case be taken note of. Admittedly, on the complaint bearing no.144/2018, filed by the respondent/decree holder for refund of the deposited amount, the appellant/judgment debtor was directed to refund the entire amount paid by the respondent/decree holder along with interest @ 10.75% from the date of each payment till 14.12.2018, to the respondent/decree holder within a period of 90 days. As per

the said order dated 14.12.2018, the learned Authority had quantified the total amount to be Rs.42,47,483/- which the appellant/judgment debtor was held liable to pay to the respondent/decree holder. During the execution proceedings, vide order dated 15.03.2022, the learned Authority allowed the interest to the respondent/decree holder on the deposited amount till realisation. Further, during the execution proceedings, as is explicit from the perusal of the order dated 10.11.2021, Annexure-E (Page 88), the appellant/judgment debtor had paid an amount of Rs.47,22,053/- to the respondent/allottee before the learned Authority and the learned Authority also observed that since there was a dispute about the decreetal amount calculations, so, the parties were directed to appear before the C.A. of the Authority on 26.11.2021 to settle the accounts.

11. Thereafter, vide order dated 18.01.2022, Annexure- F (Page 90), the learned Authority observed that the CA of the Authority has submitted detailed calculation-sheet as per which an amount of Rs.8,71,605/- was still due towards the appellant/judgment debtor. Since, the CA of the learned Authority had filed the calculations stating that the appellant/judgment debtor was still liable to pay the amount of Rs.8,71,605/-, so, in order to comply with the proviso to Section 43(5) of the Act, the appellant/judgment debtor

deposited the aforesaid amount with this Tribunal at the time of filing of the appeal.

12. The law is well settled that the Executing Court is bound by the terms of the decree and it cannot travel beyond the scope of the decree. The ratio of the citations ***V. Ramaswami Aiyengar and others'*** *case (Supra),* ***Rameshwar Dass Gupta's*** *case (Supra) and* ***State of Punjab's*** *case (Supra)* can be condensed as follows:-

> *"It is well settled legal position that an executing court cannot travel beyond the order or decree under execution, it gets jurisdiction only to execute the order in accordance with the procedure laid down under Order 21 of the C.P.C. It is true that the executing court is to interpret the decree, but under the guise of interpretation it cannot make a new decree for the parties. The executing court is bound by the terms of the decree and it cannot add or alter the decree in its motion of fairness or justice."*

13. While applying the facts and circumstances of the present case on the touchstone of aforesaid well established law, the inevitable conclusion is that the learned Authority by virtue of the impugned order dated 15.03.2022 has travelled beyond the direction given by it in its order dated 14.12.2018. As referred above, vide order dated 14.12.2018, the learned Authority had held the appellant/judgment debtor to pay the quantified amount of Rs.42,47,483/-, whereas, in spite of the

fact that the appellant has already paid an amount of Rs.47,22,053/- as mentioned in the order dated 10.11.2021 (Annexure-E) i.e. an excess amount of Rs.4,74,570/-, again vide impugned order the learned Authority has directed the appellant/judgment debtor to pay further amount of Rs.8,71,605/-. Since, the appellant/judgment debtor against the quantified amount of Rs.42,47,483/-, as directed vide order dated 14.12.2018, has already paid an amount of Rs.47,22,053/- i.e. an excess amount of Rs.4,74570/-, so, the learned Authority was not at all justified to ask the appellant/judgment debtor to further pay an amount of Rs.8,71,605/-. Once, the amount which the appellant/ judgment debtor is liable to pay to the respondent/decree holder, has been quantified by the learned Authority, then for executing the said order, the learned Authority cannot travel beyond the mandate of its order dated 14.12.2018 by asking the appellant/judgment debtor to pay the amount till realization.

14. Thus, as a conclusion to the aforesaid discussions, we are of the considered view that the impugned order dated 15.03.2022 handed down by the learned Authority is liable to be set aside and is accordingly set aside. Consequently, the appeal filed by the appellant/judgment debtor stands allowed.

15. It is further observed that the appellant/judgment debtor is entitled for the refund of an amount of Rs.4,74,570/- which it had paid in excess to the respondent/decree holder, who is further directed to return this amount of Rs.4,74,570/- to the appellant/judgment debtor within a period of 30 days.

16. The amount of Rs.8,71,605/- deposited by the appellant/judgment debtor with this Tribunal to comply with the proviso to Section 43(5) of the Act, along with interest accrued thereon, be sent to the learned Authority for disbursement to the appellant/judgment debtor subject to tax liability, if any, as per law and rules.

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

18. File be consigned to the record.

Announced:
February 08, 2023
CL

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

Anil Kumar Gupta
Member (Technical)