



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY		S
Day and Date	Tuesday and 03.01.2023	
Complaint No.	E/6069/2022/1574/2019 Case titled Rajender Chaudhary VS Pareena Infrastructure Private Limited	
Complainant	Rajender Chaudhari	
Represented through	Decree holder in person	
Respondent	Pareena Infrastructure Private Limited	
Respondent Represented through	Shri Prashant Sheoran Advocate	
Last date of hearing	22.12.2022	
Proceeding Recorded by	Naresh Kumari and HR Mehta	

Proceedings

The case has been received from the Adjudicating Officer on 22.12.2022 for further orders of the authority. Initially, complaint bearing no. 1574/2019 was filed by the complainant/DH seeking refund of the amount paid along with interest. The said complaint was disposed of vide order dated 17.08.2021 of Adjudicating Officer wherein allowing refund of amount paid along with interest thereon and Rs. 1,00,000/- as compensation.

An execution petition bearing no. 4689/2021 was filed by the complainant for execution of order dated 17.08.2021 of Adjudicating Officer. However, in the meantime, the respondent-builder preferred appeal against the order dated 17.08.2021 of Adjudicating Officer. The said appeal bearing no. 513/2021 was disposed of with a direction that the complaint to grant refund in view of law laid down by Hon'ble Apex Court of the land, is to be decided by the Authority. Specific direction were made vide orders dated 13.05.2022 of Hon'ble Appellate Tribunal that: -

- i. Impugned order dated 17.08.2021 was set -aside.
- ii. Case was remitted to the Authority for fresh decision of complaint.

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अर्तगत गठित प्राधिकरण
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



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iii. Pre-deposit amount of Rs. 1,63,21,243/- along with interest accrued be sent to Authority for disbursement of same to the appellant subject to tax, if any, as per law of land.

Relevant measures taken by the Authority in view of order dated 13.05.2022 of Hon'ble Appellate Tribunal are briefed hereunder: -

- i. Order dated 17.08.2021 was set aside, and the complaint was taken up as a fresh complaint for refund.
- ii. Execution petition bearing no. 4689/2021 was dismissed as the order against which such execution was filed was set aside.

In compliance of orders of Hon'ble Appellate Tribunal, the said complaint bearing no. 1574/2019 was dealt as fresh complaint and vide order dated 31.05.2022 of Authority, the said complaint was disposed of wherein allowing refund of amount paid i.e. Rs. 1,05,98,325/- along with interest @9.50%.

An application for rectification dated 06.07.2022 was filed by the complainant requesting rectification in amount paid. The said application was listed before the Authority on 15.07.2022 and as per *consensus ad idem* arrived between the parties, and taking into consideration due procedure of law, not limited to Section 39 of Act, such application was allowed and the amount paid by the complainant was revised to **Rs. 1,06,20,290/-**.

The complainant in hope of getting its hard-earned savings of life, filed another execution-petition bearing no. 6069/2022 before the Hon'ble Adjudicating Officer on 29.08.2022. Vide order dated 09.12.2022, the amount lying with the Authority was specifically attached with execution petition till further orders subject to order passed by Appellate Tribunal. However, the Adjudicating Officer vide order dated 22.12.2022 has referred the matter to the Authority for further proceeding due to emotional outburst of the DH as he loudly pressed the release of his amount by that day only.

The DH filed application dated 22.12.2022 seeking apology with regard to its conduct during the proceedings and submitted at this age of 76, he is running from post to pillar to get his hard-earned money back. He has been knocking the doors of the different legal platform since 2019 and knocking at every door to get his money back. He is in dire need of money to fulfill his medical needs as he has been suffering from various old age ailments and his wife was expired recently.

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The aforesaid appeal was filed for execution of order dated 31.05.2022 of Authority wherein allowing refund of amount paid along with interest. An appeal has been preferred by the JD against order dated 31.05.2022 of the Authority. However, the said appeal has yet not been proceeded by the Hon'ble Appellate Tribunal. As per online status of the appeal no. 553 of 2022 is shown as "**Received but not processed**". However, till date no information or direction with regards to same has been received from the Appellate Tribunal. Therefore, the counsel for the respondent submitted that the said appeal is not proceeded yet as the appellant has filed an application wherein requesting the Tribunal to consider the amount lying with the Authority as Pre-Deposit of same. It was specifically asked from the counsel of the respondent that whether any stay order has been passed w.r.t to amount lying with the Authority, and as submitted by the counsel of the respondent, **there is no stay order in this regard till date. Hence, the execution petition is maintainable.**

The authority observes that the concept of Pre-Deposit was laid down by the provision of Section 43(5) of Real Estate (Regulation and Development) Act. The concept of pre-deposit was introduced with a basic purpose of stoppage of unnecessary adjudication which is generally preferred by the appellant only to delay the demand. Due to the pre-deposit provision, there are major chances that only genuine appeal will be filed.

No doubt appeal is a matter of right of JD but after taking into consideration not just a single event but the trail of proceedings involved in the case, the Authority comes to a view that the JD neither wants to withdraw the amount from the Authority nor depositing further Pre-Deposit in the Appellate Tribunal to further initiate the procedure of appeal.

The Hon'ble Supreme Court of India in the cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. SCC Online SC 1044 decided on 11.11.2021 and followed in M/s Sana Realtors Private Limited & others V/s Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022* has clearly specified that the allottee has an unqualified right to seek refund and the same is reproduced hereunder:



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25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed

It is worthwhile to ponder upon the fact that the Hon'ble Appellate Tribunal in remand back cases sends the money back to the Authority instead of returning it to the appellant. If the said appeal is not filed by the respondent, the same can be rightly utilized in settling the amount of the DH in absence of any application by the JD to get the amount released. The JD in this case is not proceeding with the appeal to get a stay over the amount or execution going on in the Authority and hence, delaying the due process of law.

The Hon'ble Apex Court of land in various judgments laid down that the *rules and procedures are handmaid of Justice* and are made to deliver justice. In its **Judgment AIR 1987 SC 1353: Collector, Land Acquisition, Anantnag and Anr Vs Mst. Katiji and Ors**, Hon'ble Supreme Court of India observed that substantial justice has to be preferred upon the procedural technicalities. The Hon'ble Supreme Court of India returned the finding that, *when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*

As quoted in daily newspaper "The Tribune" dated 06.01.2023; Justice Vinod S Bhardwaj, Hon'ble High Court of Punjab and Haryana in a recent judgment made it clear that *procedural requirements could not stand as a towering impediment to disentitle a person to avail what lawfully belonged to him and was meant for welfare.* It was further asserted that *the procedure of law aimed at reducing the hardship and could not delay the benefits to an extent of it becoming a denial. When the circumstances were extreme, the remedial*



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measures has to be exemplary.

Further, an undertaking dated 22.12.2022 has been filed by the DH wherein requesting the release of amount lying with the Authority and undertaking that in case appeal filed by the promoter is accepted then he will immediately refund the amount to the Authority without any delay on his part. A guarantee be taken from the DH in this regard before release of said amount by way of undated cheque of equivalent amount along with an indemnity bond.

Since no appeal is admitted by the Hon'ble Appellate Tribunal in this regard and keeping in view order passed by Authority allowing refund along with interest and the fact that the DH is in its later stages of life & the money lying with the Authority is urgently required by DH to meet his medical exigencies. Therefore, the Authority is of considered view that the amount lying with the Authority be refunded back to the DH after putting up the file for information and approval of Hon'ble Chairman of the Authority, to refund the amount lying with the Authority along with interest thereon to the DH after deducting Rs. 1,00,000/- which was submitted as Pre-Deposit towards compensation granted in order dated 17.08.2021 of Adjudicating Officer which is separately under consideration of Adjudicating Officer and further action w.r.t. this amount of Rs. 1,00,000/- shall be taken as per the orders of Adjudicating Officer.

(one Lakh) only RA

Matter stands disposed of. File be consigned to the registry.


Sanjeev Kumar Arora
Member


Vijay Kumar Goyal
Member