

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 479 of 2021

Date of Decision: 19.05.2023

Parsvnath Developers Limited, Parsvnath Tower, near Shahdra
Metro Station Delhi, East Delhi-110032.

Appellant

Versus

1. Kiran Khyalia
2. Yudhbir Singh

Both the residents of 946, Sector-16/17, Hisar.

Respondents

CORAM:

Justice Rajan Gupta
Shri Inderjeet Mehta,
Shri Anil Kumar Gupta,

Chairman
Member (Judicial)
Member (Technical)

Argued by: Ms. Rupali Shekhar Verma, Advocate for the
appellant.

Ms. Rubai J. Singh, Advocate, for the
respondents.

ORDER:

INDERJEET MEHTA, MEMBER (JUDICIAL):

Feeling aggrieved by the order dated 25.08.2021
handed down by the Haryana Real Estate Regulatory Authority,
Panchkula (hereinafter called 'the Authority') in complaint no.
677 of 2021 titled as 'Kiran Khyalia and Another Versus M/s

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Parsvnath Developers Ltd.', vide which to ascertain the feasibility of initiating action under Section 63 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') a notice was issued to the appellant-promoter, it has chosen to file the present appeal.

2. We have heard learned counsel for the parties and have thoroughly perused the material available on the record.

3. Admittedly, in Complaint No. 526 of 2020 titled as 'Kiran Khyalia & Anr. versus M/s Parsvnath Developers Ltd., an order dated 31.03.2021 was handed down by the Id. Authority in favour of the respondent-allottees, whereby, the appellant-promoter was directed to pay to the respondent-allottees interest of Rs. 33,36,525/- within 45 days from the date of uploading of the order and the appellant was further directed to pay to the respondent-allottees every month's interest till handing over of possession of the flat, which on calculation as per Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 was worked out to Rs. 41,040/- per month.

4. Since, the appellant-promoter did not comply with the said order dated 31.03.2021, in spite of initiation of Execution Proceedings, as contemplated under Section 40 of the Act, so, notice under Section 63 of the Act to ascertain the

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feasibility of initiating action was also issued to the appellant-promoter and reply to the same was filed by the appellant-promoter.

5. Learned counsel for the appellant has submitted that as the order dated 31.03.2021 can be executed by adopting the process as contemplated under Section 40 of the Act, so, the provisions of Section 63 cannot be invoked for recovery of the amount payable under an order of the Authority.

6. Per contra, learned counsel for the respondent has submitted that Section 63 nowhere provides that the provisions contained therein can be invoked only in respect of specific kind of order passed by the Authority and irrespective of the fact that the proceedings have been initiated under Section 40 of the Act, penalty under Section 63 can also be simultaneously imposed on the appellant-promoter to realize the amount.

7. To appreciate the aforesaid respective contentions of learned counsel for the parties let us have a thorough look and Section 40 & 63 of the Act, which are as follows”

“Section 40: Recovery of interest or penalty or compensation and enforcement of order, etc.

(1) *If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the*

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adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulation made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.

(2) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction the same shall be enforced, in such manner as may be prescribed.”

“Section 63: Penalty for failure to comply with orders of Authority by promoter.

If any promoter, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of the real estate project as determined by the Authority.”

8. From perusal of the above provisions, it is explicit that Section 40 & 63 deal with two different purposes. As per Section 40, a procedure has been laid down for recovery of the

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amount which is payable by the party in terms of an order passed by the Authority against such party; whereas, Section 63 empowers the Authority for imposing penalty in appropriate cases where a party has failed to comply with its order. Section 63 nowhere provides that the provisions contained therein can be invoked only in respect of a specific kind of order passed by the Authority. In fact, the use of expression 'any order' in Section 63 clearly lays down that the Authority irrespective of adopting the procedure provided in Section 40, has jurisdiction to impose penalty under Section 63 on promoter who fails to comply with any of its order. In fact, the provision of Section 63 has to be construed as additional powers bestowed upon the Authority to impose penalty on promoter who fails to comply its order.

9. Faced with this situation, learned counsel for the appellant, while drawing the attention of this Tribunal towards para no. 96 of the judgment dated 17.08.2022 handed down by the Hon'ble Punjab and Haryana High Court in CWP No. 7738 of 2022 (O&M) tiled as ***"M/s International Land Developers Private Limited versus Aditi Chauhan and others"*** has submitted that to execute the order passed by the Authority, only compliance of the section 40 of the Act read with Rule 27 of Rules, 2017 is required. After having a thorough look on the

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observations as made by the Hon'ble Punjab and Haryana High Court in para no. 96 of M/s International Land Developers Private Limited case (Supra), we are of the considered view that the submission made by the learned counsel for the appellant is not only devoid of merit but is also misconceived. In the said judgment, there is no reference to Section 63 of the Act, and there is nothing to show that there is any bar in invoking the said section in the facts and circumstances of a given case

10. Thus, as a consequence to the aforesaid discussion, we are of the considered view that the present appeal preferred by the appellant containing no merit deserves dismissal and is accordingly dismissed.

11. No order as to costs.

12. Copy of this order be communicated to both the parties/counsel for the parties.

13. File be consigned to the record.

14. Copy of this order be also circulated to both the Authorities and the Adjudicating Officers.

Announced:
May 19, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)