

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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**Appeal No.524 of 2022**

**Date of Decision: 23.02.2023**

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

Appellant

Versus

1. Prashant Dubey,
2. Purti Dubey,

Both are residents of A-702, Sanmati Kunj, Dwarka, Plot  
No.19A, Sector 6, Dwarka, New Delhi.

Respondents

**CORAM:**

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

**Chairman  
Member (Judicial)  
Member (Technical)**

**Argued by:** Shri Kamal Jeet Dahiya, Advocate,  
for the appellant.

Respondents ex parte.

**ORDER:**

**INDERJEET MEHTA, MEMBER (JUDICIAL):**

Feeling aggrieved by the orders dated 10.08.2021,  
22.09.2021, 09.11.2021 and 04.03.2022 handed down by the  
learned Haryana Real Estate Regulatory Authority, Gurugram  
(hereinafter called, 'the Authority') and order dated 20.04.2022

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handed down by the Learned Adjudicating Officer of the Authority, in Complaint No.E/1947/2021/6615/2019, titled as “Prashant Dubey and another v. Raheja Developers Pvt. Ltd.”, vide which, firstly the bank accounts of the appellant/Judgment Debtor were attached, and thereafter show cause notice to the Directors of the Judgment Debtor (for brevity ‘JD’)/appellant, for committing them to Civil Imprisonment for disobeying the orders was issued, the appellant/JD has chosen to prefer the present appeal.

2. The respondents/Decree Holders had preferred a complaint No.6615/2019 titled as “Prashant Dubey and another v. Raheja Developers Pvt. Ltd.”, before the learned Authority, claiming the relief of possession of the allotted flat as well as interest on 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/Decree Holders vide order dated 18.02.2020, and the relevant part of the said order is as follows:-

- “i. The respondent is directed to pay interest accrued so far at the prescribed rate of 10.20% p.a. for delay in handing over the possession from the due date of possession i.e. 26.07.2011, till the date of this order to the complainants within 90 days from the date of decision and*

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*subsequent interest to be paid by the 10<sup>th</sup> of each succeeding month, till the offer of actual physical possession of the unit*

- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.*
- iii. The respondent shall not charge anything which is not part of flat buyer agreement.”*

3. Since, in spite of the aforesaid directions, the appellant/JD did not comply with the said order, so, the respondents/Decree Holders preferred execution complaint No.E/1947/2021/6615/2019, titled “Prashant Dubey and another Vs. M/s Raheja Developers Limited”, to execute the aforesaid order dated 18.02.2020.

4. During the execution proceedings, the learned Authority handed down the impugned orders dated 10.08.2021, 22.09.2021, 09.11.2021 and 04.03.2022 whereas learned Adjudicating Officer handed down the impugned order dated 20.04.2022, which is as follows:-

*“Learned counsel for DH files an application with prayer to send directors of JD to civil imprisonment for disobeying order(s) of this forum/authority.*

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*Issue show cause notice to directors of JD as why same be not committed to civil imprisonment. Reply, if any, be filed till next date.*

*To come on 12.07.2022 for further proceedings.”*

5. As has been mentioned in the interlocutory order dated 22.09.2022, handed down by this Tribunal in the present appeal, learned counsel for the appellant had stated that the present appeal may be treated for impugning the order dated 20.04.2022 only, and the relevant part of the said interlocutory order is as follows:-

*“At the very outset, the ld. counsel for the appellant has stated that though by virtue of present appeal, he has impugned the order 20.04.2022, 04.03.2022, 09.11.2021 and 22.09.2021, but the present appeal may be treated for impugning the order dated 20.04.2022 only.”*

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

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

8. Learned counsel for the appellant has submitted that the impugned order dated 20.04.2022 is without jurisdiction as the learned Adjudicating Officer of the learned Authority is not legally empowered to execute the order dated

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18.02.2020 handed down by the learned Authority in complaint no.6615/2019 “Prashant Dubey and another Vs. M/s Raheja Developers Limited”, vide which the complaint filed by the respondents/Decree Holders seeking possession of the flat and interest on delayed possession, was allowed along with interest at the prescribed rate. Further, it has been submitted that the order No.9/1-2022HARERA/GGM/(Admin) dated 16.03.2022, issued by the learned Authority, delegating the powers to execute its order, to the learned Adjudicating Officer, is beyond the jurisdiction of the learned Authority. Thus, the impugned order is apparently illegal, without jurisdiction and is liable to be set aside. Reliance has been placed upon the citation ***Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. 2022(1) R.C.R. (Civil) 357.***

9. Learned counsel for the appellant while drawing the attention of this Tribunal towards Section 40 of the Real Estate (Regulation and Development) Act, 2016, (hereinafter called ‘the Act’), has submitted that if any person fails to pay any interest or penalty or compensation imposed, it shall be recoverable from such person, whether a promoter, an allottee or a real estate agent, in such manner as may be prescribed as an arrears of land revenue. Further, it has been submitted

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that Rule 27 of the Haryana Real Estate (Regulation and Development) Rules, 2017, (hereinafter called 'the Rules'), provides for enforcement of the order, direction or decision of the Adjudicating Officer, Authority or Appellate Tribunal, in the manner as if it were a decree or an order made by Civil Court in a suit pending therein, and thus, Rule 27 of the Rules, is not in consonance with the statutory provision of Section 40 of the Act, which provides the method of realisation of the amount as arrears of land revenue. Thus, the impugned order is also liable to be set aside on this ground.

10. Lastly, it has been submitted that neither any provision of the Act nor any of the Rules, empowers the learned Adjudicating Officer to issue warrants and thus the impugned order deserves to be set aside on this ground also.

11. We have duly considered the aforesaid submissions.

12. 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

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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.

13. Undisputedly, the order dated 18.02.2020, which has been sought to be executed by way of execution by the respondents/D.Hs., has been handed down by the learned Authority and the respondent/D.Hs. has been held entitled to the possession of the unit as well as interest on delayed possession at the prescribed rate of 10.20% per annum from the due date of possession i.e. 26.07.2011 till the offer of actual physical possession of the unit.

14. Admittedly, to authorize the learned Adjudicating Officer to execute its orders, the learned Authority had passed resolution/order No.9/1-2022HARERA/GGM/(Admin) dated 16.03.2022, delegating its powers to the learned Adjudicating Officer to hear and execute the execution application with respect to the complaint already heard, decided, and disposed of by the learned Authority.

15. The legality and validity of this aforesaid order No.9/1-2022HARERA/GGM/(Admin) dated 16.03.2022, has

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also been assailed by learned counsel for the appellant by submitting that only learned Authority which had passed the order for possession and interest on delayed possession, 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*



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*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.”*

16. Thus, in view of the aforesaid observations of the Hon'ble High Court, the learned Adjudicating Officer, who has handed down the impugned order dated 20.04.2022, is legally entitled to pass such orders.

17. To appreciate the contention of learned counsel for the appellant that Rule 27 of the Rules providing mechanism for realization of the amount as a decree or an order of the Civil Court, is not in consonance with the provisions of Section 40 of the Act, which says that the recovery of payment of interest, penalty and compensation is to be realized as an arrears of land revenue, first of all, let us have a look at Section 40(1) of the Act, which is as follows:-

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**“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 adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations 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.”*

18. Sub section (1) of Section 40 of the Act, stipulates that the recovery of interest, penalty and compensation, imposed by the Adjudicating Officer or Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules or regulations made thereunder, shall be realized from such promoter, allottee or real estate agent in such manner as may be prescribed as an arrears of land revenue.

19. Rule 27 of the Rules 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*

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*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.”*

20. 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 decree or an order made by the Civil Court, in a suit pending therein.

21. Though, the mechanism provided under Rule 27 of the Rules, to realize the amount as if it were a decree or an order made by the Civil Court in a suit pending therein, is not in accordance with mechanism as provided in Section 40 of the Act, which stipulates that the payment of interest, penalty and compensation is to be realized as an arrears of land revenue, but, merely on this account, the process initiated by the learned Adjudicating Officer cannot be declared null and void because our own Hon’ble High Court in authority ***International Land Developers Private Limited’s*** (Supra), in para no.94 has observed as under:-

“94. ....we hold that  
Rule 27 of the Rules should actually have

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*provided a mechanism separately for giving effect to the provisions of sub-sections (1) and (2) of Section 40, but we would not hold Rule 27 to be ultra vires the provisions of the Act, firstly because there is actually no challenge in the petition to the vires of the said rule; and second, holding so would 'abrogate' the machinery provision for enforcement of the provisions of Section 40.*"

22. Further, in para no.96 of the said judgment, the Hon'ble High Court has also made the following observations:-

*"96. As regards a permanent solution to ensure compliance of what is stipulated in sub-section (1) of Section 40 of the Act, the respondent State Government of Haryana is directed to consider within a period of 4 months from today, an appropriate amendment in Rule 27 of the Rules, so as to ensure that any amount that is recoverable in terms of the said provision [Section 40(1)], is recovered within the shortest possible time; by way of either posting permanently a revenue official to each Regulatory Authority in Haryana as has been constituted under the provisions of the Act, empowered with the jurisdiction as would be necessary to be conferred upon him/her for recovery as arrears of land revenue, so that upon any execution proceedings being filed for giving effect to any recovery in terms of Section 40(1), the matters need not be referred to regular revenue Authorities and can be effectively dealt with immediately by the officer posted in the*

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*Authority itself for that purpose, (as has been conferred with such jurisdiction to carry out the procedure of recovery by way of arrears of land revenue).*

*Alternatively, the Government could also consider conferring powers of recovery under the relevant provisions of the Land Revenue Act, upon any officer already posted in the Regulatory Authority.*

*Of course, that entire matter is for the Government to consider and act upon, within a period of four months from today, so as to try and ensure that all aims and objectives of the Act are given an effective meaning.”*

23. As per these aforesaid observations, the Hon'ble Punjab and Haryana High Court, has directed the State Government of Haryana, to find a permanent solution to ensure compliance of the provision of sub-section (1) of Section 40 of the Act, and also to make an appropriate amendment in Rule 27 of the Rules, so that any amount which is recoverable in terms of said provision of Section 40(1) of the Act, is recovered within the shortest possible time. Till such mechanism is provided by the State of Haryana by making the proper amendment in Rule 27 of the Rules, the recovery of the amount can be realized by the Adjudicating Officer of the Authority treating it as a decree or an order made by Civil

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Court in a suit pending therein, specifically when, as referred above, the Rule 27 of the Rules, has not been held to be ultra vires to the provisions of the Act by the Hon'ble Punjab and Haryana High Court.

24. To appreciate the last submission of learned counsel for the appellant that neither any provision of the Act, nor any of the Rules, empowers the Adjudicating Officer to issue warrants, in this regard, we shall have to go through some provisions of the Code of Civil Procedure (for brevity 'CPC').

25. Once, this aspect is established that the learned Adjudicating Officer is empowered for enforcement of the order, direction or decision of Adjudicating Officer, Authority or the Appellate Tribunal, in the manner as if it were decree or order passed by the Civil Court, let us have a look at Order 21 Rule 30 of the CPC, which is as follows:-

*“30. **Decree for payment of money** - Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.”*

26. Since, the order dated 18.02.2020 handed down by the learned Authority is regarding payment of money, so, the

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said order, as per Order 21 Rule 30 of the CPC, can be executed by the detention in civil imprisonment of the judgment debtor, or by attachment and sale of his property, or by both.

27. During the execution proceeding, the learned Authority had handed down the impugned orders dated 10.08.2021, 22.09.2021, 09.11.2021 and 04.03.2022 and from the perusal of these orders, it is explicit that in spite of serious endeavour made by the learned Authority to attach the account of the Judgment Debtor to realize the decretal amount of Rs.50,48,962/-, nothing could be recovered and, ultimately, the respondents/Decree Holders filed an application before the Adjudicating Officer with prayer to send the Directors of the appellant/Judgment Debtor to civil imprisonment for disobeying orders of the learned Authority and, accordingly, show cause notice was issued vide impugned order dated 20.04.2022.

28. Regarding arrest and detention in civil imprisonment, the relevant provision in the CPC is Order 21 Rule 37 and the same is as follows:-

***“37. Discretionary power to permit judgment-debtor to show cause against detention in prison.- (1) Notwithstanding anything in these rules, where an application is for the execution of a***

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*decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court shall, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison:*

*Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.*

*(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree holder so requires, issue a warrant for the arrest of the judgment-debtor.”*

29. The learned Adjudicating Officer in accordance with this aforesaid rule, on an application by the respondents/Decree Holders for sending Directors of the appellant/JD, vide impugned order dated 20.04.2022 issued a show cause notice as to why they should not be committed to civil imprisonment. However, instead of responding to the same, the appellant/JD has chosen to prefer the present appeal. The proper course for the appellant/JD was to file reply to the show cause notice issued by the learned



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Adjudicating Officer. Further, as per clause (2) of Rule 37 of the CPC, if appearance is not made in obedience to the notice, the Court (Adjudicating Officer) shall, if the Decree Holders so requires can issue a warrant of arrest of the judgment debtor.

30. Since, the learned Adjudicating Officer, in the present case, in accordance with Rule 27 of the Rules, is executing the order dated 18.02.2020 of the learned Authority, which is a decree for payment of money, as a decree or an order made by Civil Court in a suit pending therein, so, he is legally empowered to issue warrants as stipulated under Order 21 Rule 37 of the CPC.

31. Needless to say that the civil imprisonment of the judgment debtor would be in accordance with Order 21 Rule 39 of the CPC, wherein, the decree holders are required to deposit subsistence allowance, with the Court (learned Authority/learned Adjudicating Officer) as ordered by the Court (learned Authority/learned Adjudicating Officer).

32. Accordingly, the procedure adopted by the learned Adjudicating Officer in the execution proceedings by way of the impugned orders, to realize the due amount from the appellant/JD as a decree or an order made by the Civil Court in a suit pending therein, is in accordance with Rule 27 of the Rules and thus, there is no illegality and infirmity in the

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impugned orders dated 10.08.2021, 22.09.2021, 09.11.2021 and 04.03.2022 handed down by the Authority and order dated 20.04.2022 handed down by the Learned Adjudicating Officer of the Authority.

33. As a sequel to the aforesaid discussion we are of the considered view that the present appeal preferred by the appellant/JD containing no merits deserves dismissal and is accordingly dismissed.

34. The copy of this order be communicated to the parties/learned counsel for the parties, learned Authority, Gurugram, and learned Adjudicating Officer of learned Authority Gurugram.

35. File be consigned to the record.

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal  
Chandigarh

Inderjeet Mehta  
Member (Judicial)

Anil Kumar Gupta  
Member (Technical)