

**BEFORE THE HARYANA REAL ESTATE
APPELLATE TRIBUNAL**

**Appeal No. 645 of 2022
Date of Order: 10.08.2023**

M/s Aerens Gold Souk Projects Private Limited through Shri Amit Gupta, registered office at Plot No.1, Shardah Niketan, Sarasvati Vihar, Pitampura, 34, New Delhi-110034.

Appellant

Versus

Rameshwar son of Shri Mani Ram, Village Allaudinpur, V.P.O. Budhera, Tehsil Luharu, Bhiwani, Haryana.

Respondent

CORAM:

Justice Rajan Gupta Shri Anil Kumar Gupta,	Chairman Member (Technical)
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Argued by: Mr. Shubhnit Hans, Advocate
for the appellant.

Mr. Pradeep Singh Sheoran, Advocate
for the respondent.

ORDER:

RAJAN GUPTA, CHAIRMAN:

In the present appeal, the appellant has posed to challenge the order dated 24.11.2021 passed by Haryana Real Estate Regulatory Authority, Panchkula (hereinafter referred to as 'the Authority'). The appellant has also challenged the recovery certificate dated 29.12.2021 and order dated 07.09.2022 passed subsequent thereto.

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2. This Tribunal issued notice on the application for condonation of delay vide its order dated 09.09.2022 and also issued certain interim directions.

3. When the case was taken up for hearing, at the outset, a query was put to counsel for the appellant about the delay in filing the appeal. He referred to his application under Section 5 of the Limitation Act, to justify the delay. He submitted that fresh cause of action has arisen after issuance of the recovery certificate dated 29.12.2021 by the Authority at Panchkula. Besides, the appellant had filed application dated 16.08.2022 seeking review of order dated 22.01.2019 passed by the Authority along with an application seeking stay of recovery certificate dated 29.12.2021. The application was dismissed vide order dated 07.09.2022 by the Authority. Thus, the appeal was filed well within limitation from the date of the order dismissing the application i.e. 07.09.2022.

4. Learned counsel for the respondent has vehemently opposed this plea. According to him, limitation has to be counted from the date of original order passed by the Authority on 22.01.2019 i.e. almost more than 4½ years back. The recovery certificate was issued pursuant to the said order, so the appellant cannot take advantage of

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dismissal of the application challenging the issuance of recovery certificate or dismissal of the review application.

5. We have considered the rival contentions of learned counsel for the parties.

6. Perusal of the grounds of appeal shows that the appellant has posed to challenge the order passed by the Authority way back in the year 2019. The appellant remained silent for a considerable period thereafter till the execution proceedings commenced. Vide order dated 24.11.2021, the Authority directed the District Collector to recover the decretal amount of Rs.46,44,966/-. Pursuant to the said order, the Executive Director, HRERA, Panchkula forwarded the recovery certificate to the District Collector, Hisar for taking appropriate action. In the meanwhile, the appellant moved an application seeking review of order dated 22.01.2019. The appellant also sought stay of the recovery proceedings. The plea of the appellant was dismissed vide order dated 07.09.2022.

7. In the facts and circumstances of the case, we are not convinced with the contention of the appellant that limitation has to be reckoned from 07.09.2022. It is evident that all the proceedings subsequent to the original order dated 22.01.2019 passed by the Authority are in the nature of execution proceedings and are consequent to the

main order dated 22.01.2019. There is no room for doubt that the appellant, in fact, is challenging the original order passed way back in January, 2019 and trying to circumvent from the bar of limitation by raising frivolous pleas. Even the review application moved by the appellant and dismissal thereof on 07.09.2022 does not bring the appellant within limitation period. It is noteworthy that Section 39 of the Real Estate (Regulation and Development) Act, 2016 (for short the 'Act 2016'), provides only rectification of orders and not permit review of the orders passed which is in the nature of a decree. Section 39 of the Act is reproduced below for ready reference:-

“39. Rectification of orders.

The Authority may, at any time within a period of two years from the date of the order made under this Act, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act:

Provided further that the Authority shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.”

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8. A perusal of the aforesaid provision clearly shows that it only empowers the authority for rectification of mistakes apparent on record and it does not permit amendment of any substantive part of the order passed by the Authority.

9. It is inexplicable why the appellant did not pose to challenge the order dated 22.01.2019 passed by the Authority immediately within the limitation prescribed in the Act and kept on moving various applications before the Authority. The appellant was well aware of the fact that the said order dated 22.01.2019 passed by the Authority could be challenged only by way of appeal before this Tribunal. However, the appellant preferred this appeal on 07.09.2022 i.e. after a lapse of almost three years and eight months.

10. In the facts and circumstances of the case, we are of the considered view that 'sufficient cause' for condonation of delay is not made out as the appellant was aware of the order dated 22.01.2019 passed against it which could have been challenged within the period prescribed in the Act. The application is thus without any merit and is hereby dismissed. Consequently, the appeal also stands dismissed being barred by limitation.

11. The appellant has deposited an amount of Rs.46,44,966/- with this Tribunal in view of proviso to

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Section 43(5) of the Act, 2016. This Tribunal vide order dated 09.12.2022 had directed that an amount of Rs.24,30,099/- be remitted to the Authority for disbursement to the respondent/allottee. We, thus, direct that rest of the amount along with interest accrued thereon be remitted to the Authority for disbursement to the respondent/allottee subject to tax liability, if any, as per law.

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

13. File be consigned to the record.

Announced:
August 10, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)