BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.661 of 2022
Date of Decision: 21.08.2023

M/s Vatika Limited, A 002, INXT City Centre, Ground Floor, Block A, Sector 83, Vatika India Next, Gurugram, Haryana, 122012.

Appellant

Versus

Mr. Prateek Srivastava

Ms. Namita Mehta

Both R/o Flat No. B-191, The icon, DLF Phase 5, Sector-43, Gurgaon-122001.

Respondents

CORAM:

Justice Rajan Gupta **Chairman**
Shri Anil Kumar Gupta **Member (Technical)**

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

Mr. Abhijeet Gupta, Advocate,
for the respondent.

O R D E R:

Rajan Gupta, Chairman:

Appellant has posed challenge to order dated 22.08.2023 passed by the Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority'), which reads as under:

"Proceedings

Learned counsel for DH requests to attach the bank account of JD detailed as under:

3. Bank Account No. 02802320000042, HDFC Bank Ltd. , First India Place, Mehrauli Gurugram Road, Gurugram-122002

4. Bank Account No. 5720350000172, HDFC Bank Ltd. Vatika Atrium, Block A, Khasra No. 1741/1742/1743, Village Wazirabad, Sector-53, Gurugram-122002.

JD admits that no appeal has been filed against decree under execution and there is no stay against it. No objections are filed. Considering all this, request is allowed. Let Bank account(s) of JD mentioned above are attached to the extent of decretal amount. Managers of said bank are directed not to allow withdrawal of any amount to the extend to decretal amount from said account(s). till further orders. Same be also asked to give report about balance in that account(s) till next date.

To come on 19.10.2022 for further proceedings.

(Rajender Kumar)
Adjudicating Officer
22.08.2022"

2. Appellant has assailed the order on the ground that one of the accounts, which have been attached, is the Escrow account and the other one is from which the salaries of employees of the appellant-promoter are disbursed. Besides, the Executing officer does not have the power to pass the impugned order.

3. Learned counsel for the respondents has, however, submitted that appeal needs out right dismissal as the appellant has failed to make a pre-deposit in terms of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'). As per him, the Adjudicating Officer has proceeded strictly as per law. He further submits that there is nothing on record to show that one of the accounts which have been attached, is escrow account.

4. We have heard learned counsel for the parties and given careful thought to the facts of the case.

5. Order was passed by the Authority in Complaint no. 660 of 2021 titled as Prateek Srivastava and another Vs. M/s Vaitka Limited on 10.11.2021 and same was rectified on 04.02.2022 in which the Authority has issued the following directions:

> *" (i) The respondent is directed to pay the amount of assured return at the agreed rate i.e. Rs. 131.04/- per sq. ft. to the complainants from the date the payment of assured return has not been paid i.e. October, 2018 till the date of completion of the building.*
> *(ii) The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the*

complainants and failing which the amount would be payable with interest @ 7.30% p.a. till the date of actual realization.

(iii) The respondent shall not charge anything from the complainants which is not part of the agreement of sale.

44. It is clarified that the period of appeal and period of payments of decretal amount shall be counted from the date this amended/rectified order is uploaded on the website of the Authority.

45. Complaint stands disposed of.

46. File be consigned to Registry."

6. No challenge was posed to the orders dated 10.11.2021 and 04.02.2022. Same, thus, attained finality. Complainant, thereafter, initiated the execution proceedings before the Adjudicating Officer. On consideration of the issue, the Adjudicating Officer proceeded to attach two bank accounts of the appellant-promoter maintained with HDFC Bank Ltd. The contentions of the appellant-promoter are that the Adjudicating Officer has no jurisdiction to entertain the execution proceedings and pass the order.

7. In Appeal No. 523 of 2022 titled as "M/s Raheja Developers Limited vs. Bharat B. Luthra & another", decided on 23.02.2023, we dealt with a similar issue and

came to the conclusion that the Authority was competent to delegate its powers to the Adjudicating Officer under Section 81 of the Act. For this purpose, Adjudicating Officer can pass appropriate orders as per Law.

8. It appears that the order dated 23.02.2023 passed by this Tribunal in Appeal No. 523 of 2022 tiled as M/s Raheja Developers Limited, case (Supra) has attained finality as learned counsel for the appellant could not show that any challenge has been posed to the said order. If proper procedure in the execution of the order passed by the Authority is not followed, the allotee's interest would suffer immensely.

9. In view of the fact that the order dated 22.08.2023 passed in execution proceedings flows from the decree passed by the Authority in its order dated 10.11.2021 and rectified on 04.02.2022. As per the counsel, compliance of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 is mandatory. We find substance in this plea, this question is not directly an issue in the instant case. Thus, it is left open to be decided in an appropriate case.

10. No legal infirmity has been pointed out in the order passed by the Adjudicating Officer. We find substance in the plea of learned counsel for the respondent that there

is nothing on record to show that one of the accounts is an Escrow Account which would invite our attention and orders in that respect. Besides, the Adjudicating Officer has only attached the two accounts to the extent of decretal amount placing no bar on withdrawal of amount beyond that.

11. Under these circumstances, we find no ground to interfere in the impugned order. Same is, thus, upheld. Appeal is dismissed.

12. No order as to costs.

13. Copy of this judgment be communicated to both the parties/learned counsel for the parties and the Haryana Real Estate Regulatory Authority, Gurugram.

14. File be consigned to the record.

Announced:
August 21, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)

Rajni