

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.56 of 2024 (O&M)

Date of Decision: 26.04.2024

M/s Assotech Moonshine Urban Developer Pvt. Ltd. registered office at 105, Pankaj Tower, First Floor, Opposite Supreme Enclave Society, Mayur Vihar, Phase-I, East Delhi 110091 through its Directors;

1. Mukul Kumar (Appellant No.1)
2. Sanjeev Srivastva (Appellant No.2)

Appellants-Promoters

Versus

Ajay Narain Gupta, resident of House No.19, Bahubali Enclave, Karkardooma, New Delhi 110092

Respondent-allottee

CORAM:

Justice Rajan Gupta

Chairman

Present: Mr. Ajay Ghangas, Advocate,
for the appellants.

ORDER:

RAJAN GUPTA, CHAIRMAN:

Present appeal is directed against the order dated 25.09.2023 passed by the Adjudicating Officer, H-RERA at Gurugram. Operative part thereof reads as under:-

“In the facts and circumstances, as described above, I find no impediment in directing police to give assistant to DH or even to execute arrest warrants, issued by this Forum. This forum (A.O.) Authorizes DCP, Police Headquarters, Gurugram to get directors of JD namely, Mr. Mukul Kumar, and Mr. Sh. Sanjeev Kumar Srivastava arrested. Same

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be produced before this forum on or before next date i.e. 12.12.2023.

To come on 12.12.2023 for further proceedings.”

2. It is evident that the complaint preferred by the allottee was disposed of vide order dated 20.07.2022. Pursuant to directions contained therein allottee filed execution petition before the Adjudicating Officer.

3. It appears that the Adjudicating Officer found that the order passed by the Authority had not been complied with, thus, the DCP, Police Headquarters, Gurugram was authorised to arrest JDs namely Mukul Kumar and Sanjeev Kumar Srivastava vide its orders dated 25.09.2023 and consequent order dated 12.12.2023.

4. Learned counsel for the appellants has assailed the said orders. According to him, same suffer from certain legal infirmities and, thus, deserve to be set aside.

5. At the outset, a query has been put to learned counsel for the appellants as to how the present appeal can be entertained in the absence of pre-deposit as envisaged by proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016, no clear answer is forthcoming.

6. This Bench is of the view that the instant appeal cannot be entertained as the statutory requirement (proviso to Section 43(5)) of the Act has not been complied with. Same is mandatory in view of the judgment of Hon'ble Supreme Court in case reported as *M/s Newtech Promoters and Developers Pvt. Ltd. v. State of UP and others etc. 2022 (1) RCR (Civil) 357.*

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7. Under these circumstances, present appeal is not maintainable and same is dismissed as such.
8. Copy of this order be sent to the parties, their counsel and the Authority below.
9. File be consigned to the records.

Announced:
26.04.2024

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Manoj Rana