

PROCEEDINGS OF THE DAY		24
Day and Date	Tuesday and 23.04.2024	
Complaint No.	MA NO. 167/2024 in CR/5544/2019 Case titled as Raj Kumar Chawla and Anr. V/s Parsvnath Hessa Developers Private Limited	
Complainant	Raj Kumar Chawla and Anr.	
Complainant through	Ms. Harshita Setia proxy counsel	
Respondent	Parsvnath Hessa Developers Private Limited	
Respondent Represented through	Shri Ashwariya Jain Advocate	
Last date of hearing	App. u/s 36, 37, 39 and 63 of the Act	
Proceeding Recorded by	Naresh Kumari and HR Mehta	

Proceedings-cum-Order

The present complaint was disposed of vide order dated 14.09.2022, wherein the Authority had directed the respondent to refund the amount received by him along with interest at rate of 10% the State Bank of India highest marginal cost of lending rate applicable as on date + 2% as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.

Now, On 11.03.2024 complainant has filed present application under section 36, 37 and 39 of the Real Estate Regulatory Authority Act, 2016 stating that the execution proceedings are pending in the court of Hon'ble Adjudicating officer. Counsel for the complainant states that in lieu of certain new developments, complainants have been made aware of the fact that respondent is illegally and unethically is trying to or has already created third party right of the unit in question and is already taking maintenance payments from the third party. Complainant further submits that it is settled law that unless and until, the respondent-judgement debtor refunds back the entire amount /comply with the order passed by the Authority of



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

MA/167/2024 in CR/5544/201

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विभाग गृह, सिविल लाईन, गुरुग्राम, हरियाणा

returning principal amount with interest, no third party rights can be created/attempted to be created on the unit in question.

Section 36 and 37 of the Act, 2016 deals with Power to issue interim orders and Powers of Authority to issue directions respectively. Under the above provision, the authority may pass interim orders and issue directions in the matters which are adjudicating before it. The relevant portion of said section is reproduced below:

Section 36: Power to issue interim orders

"Where during an inquiry, the Authority is satisfied that an act in contravention of this Act, or the rules and regulations made thereunder, has been committed and continues to be committed or that such act is about to be committed, the Authority may, by order, restrain any promoter, allottee or real estate agent from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where the Authority deems it necessary."

Section 37: Powers of Authority to issue directions

"The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned."

In the present matter, the application under section 36 to issue interim orders and under section 37 to issue directions is filed after the matter is disposed of. And as per the proviso of the above mentioned sections the authority only have jurisdiction to pass such orders and directions only in matter adjudicating before it. Authority does not have jurisdiction to pass interim orders and issue direction under the above mentioned sections in a matter which is disposed of and not adjudicating before it. Thus, the application in terms of section 36 and 37 stands dismissed being non maintainable.

Further, Section 39 deals with the rectification of orders which empowers the authority to make rectification within a period of 2 years from the date of order made under this Act. Under the above provision, the authority may rectify any mistake apparent from the record and make such amendment, if the mistake is brought to its notice by the parties. However, rectification cannot be allowed in two cases, *firstly*, orders against which appeal has been



preferred, *secondly*, to amend substantive part of the order. The relevant portion of said section is reproduced below:

Section 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."

In the present matter, the application under section 39 to rectify the directions part of the order and to insert interim relief under the same is filed. As per proviso of above mentioned section the rectification can be done for any mistake apparent from the record. In the present scenario interim relief is sought in the rectification application and Authority have no jurisdiction to amend its own order and change the substantial part of it. Thus, the application for rectification stands dismissed being not maintainable.

Moreover, On 11.03.2024, application on behalf of decree-holder under section 63 has also been filed stating that respondent deposited the cheques to the tune of part Rs.3,05,28,666/- towards partial payment of the decretal amount of Rs.3,74,24,552/- as per calculation sheet submitted by decree holders on 28.08.2023 during execution proceedings. However, out of the deposited cheques only Rs.1,59,16,988/- has been credited to the account of the complainants and the balance amount cheques to the tune of Rs.1,46,11,678/- got bounced due to insufficient funds. That as per complainant same amounts to gross misrepresentation and deliberately misleading this Hon'ble Authority by stating absolutely false facts wherein the respondent with complete malafide motives wrongly stated that the part payment of Rs.3,05,28,666/- is made.

Section 63 deals with the Penalty for failure to comply with orders of Authority by promoter which empowers the authority to impose penalty for everyday on promoters who fails to comply with, or contravenes any of the order or directions of the Authority. The relevant portion of said section is reproduced below:

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, decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to three years or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the estimated cost of the real estate project, or with both.

An application under section 63 has also been filed stating that the cheques provided by the promoter to fulfil its liability to refund the amount as awarded by the Authority got bounced and now the promoter is liable for penalty under section 63 of the Act, 2016. However, matter of dishonour of cheques are dealt under section 138 of Negotiable Instrument Act, 1881 and Authority does not have the jurisdiction to deal under Negotiable Instrument Act, 1881. The complainants have the right to approach the competent court of jurisdiction for relief in the matter.

As the matter already stands disposed of, this Authority does not have jurisdiction to pass interim orders and issue direction under the sections 36 and 37 of the Act, 2016.

So far as the application and under section 39 is concerned, it is beyond the powers of the Authority to amend its own order and change the substantial part of it.

Hence, the application under sections 36, 37, 39 and 63 of the Act, 2016 stands dismissed being not maintainable on the grounds mentioned above.


Ashok Sangwan
Member


Arun Kumar
Chairman
23.04.2024

V.I - 3
Vijay Kumar Goyal
Member