



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE ADJUDICATING OFFICER

EXECUTION NO. 1541 OF 2023

IN

COMPLAINT NO.565 OF 2022

Kanta Rani and Other

....DECREE HOLDERS

VERSUS

Haryana Shehari Vikas Pradhikaran PanchkulaJUDGEMENT DEBTOR

Date of Hearing: 09.12.2024

Hearing: 6th

Present: Mr. Gaurav Gupta, Advocate, for decree holders through VC.
Mr. Jatin, Advocate, proxy for Mr. Arvind Seth, Advocate, for judgement Debtor.

ORDER

Today, case is fixed for placing on record copy of order passed by Hon'ble Appellate Tribunal as proof of pre-deposit by the judgment debtor. The same has not been given till date.

2. Learned proxy counsel for judgment debtor has stated that Appeal no.534 of 2024 has been filed before Hon'ble Appellate Tribunal

against the order which is fixed for 22.01.2025 and pre-deposit has already been made.

3. Learned counsel for decree holder has drawn attention of the Forum towards order dated 02.12.2024 of Hon'ble Appellate Tribunal wherein no stay has been granted and it has been ordered to the Executing Court to proceed further with the present execution petition. Copy of order dated 02.12.2024 is downloaded from the website and placed on record.

Heard.

The perusal of order dated 02.12.2024 of Hon'ble Tribunal indicates that there is no stay of execution proceedings. In these circumstances, this Forum while exercising powers under Section 40 of The Real Estate (Regulation and Development) Act, 2016 and Rule 27 of Rules, 2017, in execution, is of the view that when admittedly there is no stay of the order of the Hon'ble Authority subject to execution under consideration, this Forum is legally bound to proceed with the execution for its disposal in accordance with law. Order XLI Rule 5(1) Civil Procedure Code, provides, "An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason


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only of an appeal having been preferred from the decree; but the appellate Court may for sufficient cause order stay of execution of such orders." Undoubtedly, the judgment debtor has a theoretical force in his plea that once amount has been deposited before filing an appeal, in execution he can not be asked to pay the same amount. But, this Forum is of the view that until and unless there is a stay of proceedings before executing Court, latter has to proceed further to give satisfaction to the execution which right is given by the statute to the decree holder to avail, in the manner, the judgment debtor is provided with the right to go in appeal and to get stay of proceedings, if has merit in his case. In other words, decree holder and the judgment debtor have independent remedies available to get the order executed, or, to get it stayed, as the case may be. These two rights with respective parties are independent of each other to run simultaneously and none of these two could be considered to have an overriding impact on the other until and unless there is legal order to halt proceedings in one of the matters. Moreover, learned counsel for the judgment debtor has not been able to show any legal provision or law laid down by Hon'ble higher judicial forums


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which expects this forum not to proceed further in execution in the absence of any order of stay in this case.

Hence, in the given circumstances, decree holder is directed to submit verified details of movable or immovable property/bank account of judgment debtor situated within the jurisdiction of this forum, within 15 days from today, to get the same attached for recovery of the decretal amount. As per settled proposition of law laid down in City Bank, N.A v/s Indo-American Electrical Ltd. AIR 1981 Del 27, "as a general rule, territorial jurisdiction is a condition precedent to a Court executing a decree and neither the Court which passed the decree nor the Court to which it is sent for execution can execute it in respect of the property lying outside its territorial jurisdiction." However, such details must be duly supported by an affidavit of the decree holder to say that the details of the bank account/property sought to be attached legally stand in the name of judgment debtor. Such directions have been passed to ensure that the property standing in the name of judgment debtor is only got attached. It is further directed that the details of "Separate account"(ESCROW account), which is to be utilized for the construction of the project, should be avoided


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because legally its attachment order may cause prejudice to the other co-allottees of the project. On filing of the list and the affidavit, let warrant of attachment be issued returnable on or before 06.03.2025. It shall be last opportunity.

09.12.2024


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MAJOR PHALIT SHARMA
ADSJ(Retd.)
ADJUDICATING OFFICER