



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

**BEFORE ADJUDICATING OFFICER**

**EXECUTION NO. 519 OF 2023  
IN  
COMPLAINT NO. 1032 OF 2021**

Vijay Wanti

....DECREE HOLDER

**VERSUS**

SRS Real Estate Ltd.

....JUDGMENT DEBTOR

**Date of Hearing: 16.12.2024**

**Hearing: 15<sup>th</sup>**

**Present:**

Ms. Manju Goyal, Advocate, for decree holder.

Mr. Harish Kumar, Husband of decree holder.

Judgment debtor already ex-parte vide order dated  
26.11.2024.

**ORDER:**

Today, the case is fixed for answering the following query raised on the last date of hearing i.e. 26.11.2024 by this Forum, to the learned counsel for the decree holder. For ready reference, the said order is reproduced below;

*Today, case is fixed for filing of calculation in support of claim of decree holder that judgment debtor is yet to clear the dues. Calculation are stated to have been filed with the registry but the same yet to be received on record of this file.*

*16/12/24*

Case called several times but none has appeared on behalf of the judgment debtor. It is already 04:00 PM. No further wait is justified. Hence, the present execution petition is proceeded against ex-parte in view of the provisions of Order XXI Rule 105 of CPC, as this Forum while exercising the power under Section 40 of the RERA Act, 2016 read with Rule 27 of HRERA, Rules, 2017, is competent to act as a Civil Court, to execute the order as if it is a decree.

On the point of demand of additional payment raised by the decree holder, this Forum after having gone through the admitted document i.e. conveyance deed in respect of apartment no.801, 8th Floor, Tower C-3, SRS Pearl Heights, find that there remains no payable or receivable which is the reason the conveyance deed was executed on dated 29.01.2024. For ready reference paras 2 and 3 of declaration/undertaking and agreement are reproduced below:

"2. Consideration:

a) Consideration for sale of said apartment to vendee is fixed at ₹36,53,367/- (Rupees Thirty Six Lac Fifty Three Thousand Three Hundred Sixty Seven only).

b) Vendors acknowledge that vendee has made the complete payment of aforesaid consideration to the Vendors.

3. Possession:

Vendors have already delivered the possession of said apartment to the Vendee as per order of the Haryana Real Estate Regulatory Authority, Panchkula order and nothing is pending as monetarily or in any manner as per the orders of Haryana Real Estate Regulatory Authority, Panchkula regarding this apartment. Now no any type of dispute is pending between Vendors and

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*Vendee regarding this apartment No.801 situated on 8th floor of Tower C3 in SRS Pearl Heights of said colony.”*

*The perusal of para 2 indicates that the vendee i.e. decree holder here had made the payment of full consideration to the vendor i.e. judgment debtor. Similarly, para 3 of the declaration/undertaking/agreement indicates that the vendor i.e. judgment debtor had delivered the possession and also cleared all dues to honor the order of Haryana Real Estate Regulatory Authority, Panchkula. The conjoint reading of these two clauses in nutshell prima facie make it clear that at the time of execution of conveyance deed, there remained nothing receivable or payable as the case may be which is the reason it was got mutually executed by both the parties. Hence, prima facie leaving no right with decree holder to claim additional interest as raised, which otherwise is barred by Principle of Estoppel.*

*In view of above observation, this Forum before takes a final decision on entitlement of decree holder to receive the amount as shown in calculation so submitted, poses a question to learned counsel for decree holder as to under what authority or provisions of law, the decree holder is entitled to get this amount particularly when its own document disentitle the decree holder to raise such claim.*

*On request, now to come up on 16.12.2024 for arguments on the issue of maintainability and legality of the claim for additional interest raised by learned counsel for the decree holder through calculations submitted.*

  
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2. In response to the query so raised, learned counsel for the decree holder has drawn attention of this Forum to para no.9 of the order dated 29.11.2022, which reads as under;

*“9. Taking into consideration such inordinate delay in issuing valid offer of possession and subsequent non handing over of physical possession of booked flat, Authority has no hesitation in concluding that the complainant is entitled for the delay interest in terms of Rule 15 of HRERA Rules 2017 from the deemed date of handing over possession i.e., 23.03.2016 to the date on which a valid offer of possession is made to the complainant after obtaining occupation certificate from competent authority. As per provisions of Rule 15 of HRERA Rules 2017, the payable amount on account of delay possession interest works out to ₹25,30,837/- from 23.03.2016 (deemed date of possession) till 29.11.2022 (date of order). The Authority orders that while upfront payment of ₹25,30,837/- as delay interest shall be made within 90 days of passing of this order, the monthly interest of ₹33,151/- will commence w.e.f. 01.03.2023 payable on 01.04.2023 onwards.”*

3. She has argued that two sets of relief were granted by Hon'ble Authority i.e. one with regard to handing over of the possession and second regarding the interest on delayed payment. She further argued that admittedly, the delivery of possession and execution of conveyance deed has taken place meaning thereby first set of relief has been provided by the judgment debtor. She has further argued that the second set of relief pertaining to the delayed interest is yet to be given effect of by the judgment debtor, hence the decree holder is entitled to get the said relief in its entirety. She has further argued that

admittedly in the conveyance deed, at paras 2 and 3 as reproduced in the order dated 26.11.2024 of this Forum, there is a mention of settlement of accounts, but the said contents are incorrect because at that stage a standard format of conveyance deed was provided by the judgment debtor without disclosing its contents, on which the decree holder in good faith had signed without realizing that the judgment debtor was yet to clear the second set of relief but otherwise as per the standard language of conveyance deed it is mischievously shown that all accounts cleared from both sides. She has further argued that the judgment debtor has not provided the details of all accounts settled as otherwise mentioned in the conveyance deed which itself shows that judgment debtor still owe money to the decree holder. She has further argued that since the judgment debtor is legally bound to clear all the accounts in the manner Hon'ble Authority had directed in the order under execution, which practically it has not done, the fraudulent contents of conveyance deed showing clearance of all accounts be not read against the decree holder but she be held entitled to recover the interest on the delayed payment in the manner she is entitled to. Finally, she has prayed to allow the application of the decree holder for interest on the delayed payment.

With due regards to the arguments advanced for the decree holder, this Forum though may or may not presume that in routine, the standard format of conveyance deed was presented before the

decreed holder to sign to get the conveyance deed executed of the property for which decreed holder had been running around here and there to get its possession and she may have had signed the same without realizing the impact of the contents of paras 2 and 3 of the conveyance deed, on her entitlement to get interest on delayed payment, if her story of having signed in good faith without realizing the consequences is believed. But, such presumption cannot override the impact of Sections 91 & 92 of Indian Evidence Act (Section 94 of Bharatiya Sakshya Adhiniyam, 2023) and the Principle of Estoppel. Since, in the instant case there is written document in the form of conveyance deed dated 17.10.2023 wherein there is mention of clearance of all the accounts between the two parties i.e. the decreed holder and the judgment debtor, this Forum is bound to believe the contents of the written document because the oral claim of the decreed holder of non-settlement of the accounts pertaining to interest on delayed payment or compensation, cannot be accepted as a gospel truth because of the bar provided under Section 92 of Indian Evidence Act, which speaks about exclusion of the evidence of oral agreement. To hold so, this Forum has taken strength from the law laid down by Hon'ble Apex Court in "Smt. Gangabi w/o Rambilas Gilda v. Smt. Chhabubai w/o Pukharajji Gandhi (1982) 1 SCC 4" and "Roop



Kumar v. Mohan Thedani (2003) 6 SCC 595", wherein it held in the following manner;

*"11. ...It is clear to us that the bar imposed by sub-section (1) of Section 92 applies only when a party seeks to rely upon the document embodying the terms of the transaction. In that event, the law declares that the nature and intent of the transaction must be gathered from the terms of the document itself and no evidence of any oral agreement or statement can be admitted as between the parties to such document for the purpose of contradicting or modifying its terms. The sub-section is not attracted when the case of a party is that the transaction recorded in the document was never intended to be acted upon at all between the parties and that the document is a sham. Such a question arises when the party asserts that there was a different transaction altogether and what is recorded in the document was intended to be of no consequence whatever. For that purpose oral evidence is admissible to show that the document executed was never intended to operate as an agreement but that some other agreement altogether, not recorded in the document, was entered into between the parties...." (Emphasis Supplied)"*

In other words, by virtue of provisions of Sections 91 and 92 of Indian Evidence Act (Section 94 of Bharatiya Sakshya Adhiniyam, 2023), it has to be held by this Forum that legally the decree holder has no right to claim any amount against the judgment debtor particularly when in the conveyance deed there is clear cut mention of settlement of all accounts between the parties at the time of execution of conveyance deed. Moreover, it is not the claim of the decree holder that the conveyance deed was not acted upon at all, it being a sham transaction.

  
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Rather, she can't claim it to be sham transaction as by virtue of it, possession and title was conferred upon her.

Notwithstanding anything stated above, even the Principle of Estoppel would also act against the decree holder because if she has admitted in writing to have settled the accounts with the judgment debtor to get the conveyance deed executed, she cannot be permitted to take a contrary stand of non-settlement of total accounts at this stage.

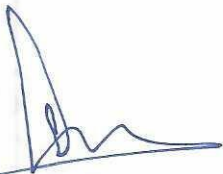
At this stage, an application of the decree holder is received seeking direction to the judgment debtor to give complete and better particulars regarding the payment of interest, if any, made by it to the petitioner/decreed holder. With regard to legality of the application moved by the decree holder, this Forum is of the view that such application at this stage of execution cannot be entertained particularly when it is already held that the no relief to the decree holder in the manner prayed now could be granted because of the bar provided under Sections 91 & 92 of Indian Evidence Act (Section 94 of Bharatiya Sakshya Adhinyam, 2023) and Principle of Estoppel. Had this Forum accepted the contentions of the decree holder regarding due payment towards the judgment debtor, this Forum may have had questioned the judgment debtor in the manner prayed in the application. In nutshell, it is held that no directions could be passed in the manner prayed in the application so received.

  
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4. In view of the foregoing discussion, the application of the decree holder demanding payment from the judgment debtor stands rejected being devoid of merit.

Let, the file be consigned to record room after uploading the order on the website of the Hon'ble Authority, as the order of Hon'ble Authority under execution stands fully satisfied leaving no legal right with the decree holder to pursue the same anymore.

  
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**MAJOR PHALIT SHARMA**  
**ADSJ(Retd.)**  
**ADJUDICATING OFFICER**

16.12.2024