



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

**BEFORE ADJUDICATING OFFICER**

**EXECUTION NO. 1764 OF 2019**

**IN**

**COMPLAINT NO. 44 OF 2018**

Rameshwar

....Complainant/Decree Holder

**VERSUS**

Arenes Gold Souk

....Respondent /Judgment Debtor

**Date of Hearing:** 26.11.2024

**Hearing:** 30<sup>th</sup>

**Present:** Mr. Pradeep Singh Sheoran Adv, for decree holder through video conferencing  
Mr. Shubhnit Hans, Advocate, for the judgment debtor through video conferencing

**ORDER**

This order of mine will dispose of an application moved on behalf of the decree holder whereby additional interest over the payments made from 24.11.2021 till the date of actual refund, has been claimed.

2. In support of his application for additional interest, learned counsel for the decree holder has argued that an order of refund of ₹24,30,099/- along with interest calculated till 24.11.2021 was passed and the said amount was deposited by the judgment debtor during execution and finally released to the decree holder on dated 09.12.2022. He has further argued that since the interest

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was calculated upto 24.11.2021, whereas the payment was released on dated 09.12.2022, it warrants entitlement of the decree holder to get additional interest over this delayed payment. He has also argued that once Hon'ble Authority in its order dated 24.11.2021, had found the decree holder entitled to get interest, it is implied that Hon'ble Authority wanted the decree holder whose payment in time got delayed because of unwarranted litigation initiated by the judgment debtor, to get interest on delayed payment. Finally, he has prayed to accept the application in the manner prayed for.

3. On the other hand, learned counsel for the judgment debtor while supporting the contents of his reply to application has argued that the decree holder is not entitled to any additional interest because Hon'ble Authority in its order dated 22.01.2019 under execution, did not ~~granted~~<sup>ed</sup> such relief to the decree holder. He has further argued that whatever payment was to be made, it has been made by the judgment debtor with upto date interest till the date of payment and release of the same if got delayed because of litigation, the judgment debtor cannot be held liable for the same as things were beyond its control. Consequently, he has prayed to reject the application more so when learned counsel for the judgment debtor himself has admitted to have received the decretal amount as is evident from order dated **05.10.2024** of this Forum.

4. With due regard to the rival contentions and facts on record, before this Forum while exercising powers under Section 40 of the RERA Act, 2016,

read with Rule 27 of the Rules 2017 made thereunder, decides whether or not the decree holder is entitled to get additional interest, as prayed, it is necessary to bring on record the relevant dates and the facts which would help in deciding the lis in a judicious manner.

**Extract of page 15 para 2 of the order dated 22.01.2019**

“the respondent no.1 shall pay ₹24,30,099/- within a period of 90 days, 50% in first 45 days from the date of uploading this order on the website of this Authority and remaining 50 % within next 45 days. The complainant shall be entitled to satisfy this order against the assets of the project or any other assets of the respondent company”.

**Facts & Dates**

i.)	The date of order of Hon'ble Authority, under execution	22-01-2019
ii.)	Execution filed	24-07-2019
iii.)	The calculated amount with interest upto 24.07.2019	₹40,11,139/-
iv.)	Calculated amount with interest upto 24.11.2021	₹46,44,966/-
v.)	The date of the calculated amount deposited with Authority by judgment debtor	09-09-2022
vi.)	Date of release of principal amount, under order dated 09.12.202 of Hon'ble Appellate Tribunal	₹24,30,099/-
vii.)	Date of compliance of order dated 09.12.2022	31-01-2023
viii.)	Date of order received from Hon'ble Appellate Tribunal to release the remaining amount	10-08-2023

ix.)	Amount with interest received as per Authority	₹22,14,867/-
x.)	The amount released with interest	₹22,70,586/-
xi.)	The date of release	09-11-2023

The above described details which includes the relevant contents of order regarding grant of relief of monetary benefits with interest and also schedule of events with dates, make it clear that Hon'ble Authority in its order dated 22.01.2019 did not grant the relief of interest on delayed payment, if the judgment debtor fail to make the payment within specified period.

5. With above facts on record, this Authority imposes following three questions to answer, to decide whether in the facts and circumstances of the present case which is governed by the beneficial legislature i.e. RERA Act, 2016 read with HRERA Rules, 2017 made thereunder, the decree holder is entitled to get the interest on delayed payment, if any, as prayed.

(A) Ques no.1 What is the general legal position where the grant of interest till realization of the amount, is not mentioned in decree under execution before the Civil Court?

To answer to this question, it is apt to note here that in general, if the decree under execution before a Civil Court, is silent about grant of interest till realization of the amount payable, the executing Court has no right to grant such interest because in that eventuality bar provided in Explanation V to Section 11 of the Civil Procedure Code would come into play, as per which "any

relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused". It means, executing Court can't grant the relief which is not granted by the trial Court. On this point, reliance is placed on the law laid down in Punjab State and others v/s Harvinder Singh, 2008(1) HRR 501 (SC), Punjab State and others v/s Bakshish Singh, 2007(1) PLR 771 (P&H), Abdulla son of Bathumi (deceased) v/s Smt. Shyama Devi, 2007 (13) RCR (Civil) 648(Allahabad), The State of Punjab and another v/s Insp. Shyam Nath and another, 1993(1) LLR 286 (P&H), Ramshwar Dass Gupta v/s State of U.P. and another, 1997(1) LLR 107 (SC).

In nutshell, in view of the provisions of Civil Procedure Code to which the quoted judgments pertain to, the quoted question is answered in the manner that "in general, the executing court cannot grant the relief of interest, if the same is not mentioned in the decree under execution."

(B) Ques no.2 What is the legal position with regard to grant of interest under the RERA Act, 2016 read with HRERA Rules 2017 made thereunder?

Before answering this question, this Forum would like to reproduce the provisions of Section 18(1) of the RERA Act, 2016, Rule 15 of the HRERA Act, 2017 and also the definition of "interest" given in Section 2 (za) of the RERA Act, 2016;

**Section 18 - Return of amount and compensation.**

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

**Rule 15 - Prescribed Rate of Interest - [Proviso to section 12, section 18 and sub section (4) and sub-section (7) of section 19]**

For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the “interest at the rate prescribed” shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.]

**Section 2(za) - “interest” means the rates of interest payable by the promoter or the allottee, as the case may be.**

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*Explanation.—For the purpose of this clause—*

*(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*

*(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;*

The perusal of provisions of Section 18(i)(b) of the Act, 2016, indicate that the allottee shall be entitled to get refund with interest at the rate prescribed in the Act. Rule 15 of the Rules 2017, defines the “rate” as “State Bank of India highest marginal cost of lending rate +2% with proviso”. How long the interest would remain payable on the refund, has been provided in Section 2(za) which says that cycle of interest would continue till the entire amount is refunded by the promoter. In other words, if the provisions of Section 18 read with Rule 15 and Section 2 (za) are co-jointly interpreted, then it would mean that in case of refund the promoter will be liable to pay the interest from the date the promoter received the amount or any part thereof till the date the amount or part thereof along with up to date interest is refunded, even if not specified in the order. However, the situation is different in case of an allottee default in payments to the promoter till the date it is paid. With this legal position, it is safe to conclude that even if an execution is filed of an order passed by Hon’ble Authority is silent regarding grant of the interest till realization of the amount payable, still in view of Explanation (ii) to Section

2(z) the allottee will be entitled to get the interest up to date of the final payment at the rate prescribed in Rule 15.

Now, here is a situation where general law says that the interest not to be granted by executing Court, where it is not mentioned in decree, whereas the special statute i.e. RERA Act, 2016, provides that interest is to be granted till the time entire payment is refunded, even if not specified in order under execution. In the given circumstances, it is to be seen which legal position is to be followed in the case in hand.

To answer this question, it is suffice to say that the provisions of RERA Act, 2016 read with HRERA Rules, 2017 made thereunder, being part of a special statute having welfare oriented approach, are to be considered having overriding effect on the general law. To hold so, this Forum has taken strength from the law laid down in Workmen of American Express International Banking Corporation vs. Management of American Express International Banking Corporation(1985(4) SCC 71), Surendra Kumar Verma vs. Central Government Industrial Tribunal-cum-Labour Court 1981 AIR 422, Har Sharan Varma vs. State of UP AIR 1985 SC 378, Hindustan Level Ltd. vs. Ashok Vishnu Kate (1985 SCC 1385), Sant Ram vs. Rajender Lal AIR 1978 SC 1601 and Greenshield vs. The Queen (1958) SCR 216, State of Gujarat vs. Patel Ramji Bhai 1979 SCR 3788. In the quoted authorities, it is concluded that “the special statute will prevail upon the general law”.



In view of the above, it is concluded that even if the Hon'ble Authority in its order has not satisfied the relief of grant of interest over the refund till realization of the decretal amount, still the decree holder is entitled to get the same in an execution filed under the Act, 2016 and Rules, 2017 made thereunder.

(C) Ques no.3 Whether with above legal position in mind, in the present facts and circumstances of the case, the decree holder is entitled to get the interest as prayed for?

The answer to this question is in negative.

In the instant case, admittedly to satisfy the recovery certificate issued to Collector, the judgment debtor had deposited the decretal amount on dated 09.09.2022 after calculating up to date interest thereon, with the Authority in accordance with law. He also had informed to have filed an appeal after pre-depositing the decretal amount there. It is also an admitted fact and also evident from the record that the amount so deposited was up to date when the same was deposited by the judgment debtor to satisfy the execution petition. It is also evident from record of the file that after coming to know about the filing of an appeal, learned Predecessor of this Forum had repeatedly posted the case for awaiting order from Hon'ble Appellate Tribunal at Chandigarh, instead for releasing the same to the decree holder, which was partly released on

dated 31.01.2023 and remaining on dated 09.11.2023 with up to date interest. From these circumstances, it is clear that the delay, if any, in release of the amount so deposited by the judgment debtor with the Authority, to the decree holder was not because of the fault of the judgment debtor but because of legal issues involved over which the judgment debtor had no control. In other words, the judgment debtor had satisfied the decree from his side in accordance with law and the Authority had also given the decree holder up to date interest when it released the amount twice, so there remains no question to blame the judgment debtor for the delay warranting imposition of liability upon it to pay the interest on delayed payment. It is not out of place to mention here that had it been the situation that the judgment debtor not deposited the decretal amount with the Authority when ordered thus caused delay in making the payment because of procedural lapse of its part, he would have been held liable to pay the interest on delayed payment, which as described above is not the case in hand. It is worth to note here that whenever recovery certificate is issued, directions are also passed by the Authority that the Collector to collect the decretal amount and then to send it to the Authority for its disbursement to decree holder. So, in such like situation, the judgment debtor had no option to give the decretal amount to the decree holder directly but to deposit the same with the Authority to satisfy the order passed.

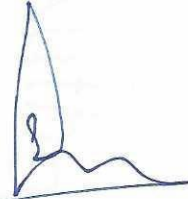
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With above observation, it is concluded that the decree holder in the given circumstances of the case, is not entitled to get any interest on delayed payment.

7. As, in the instant case, the decretal amount has already been paid to decree holder who is also not found entitled to get any delayed interest as claimed, there remains no purpose with decree holder to pursue this execution anymore, hence, the present execution is disposed of being fully satisfied.

File be consigned to record room after uploading of order on website of the Authority.

26.11.2024

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