



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE ADJUDICATING OFFICER EXECUTION NO. 2033 OF 2023 IN COMPLAINT NO. 2751 OF 2019

Jacintha Pinto and Gaurav Gilbert PintoComplainants/Decree Holders

VERSUS

Dhingra Jardine Infrastructure Pvt. Ltd.Respondent /Judgment Debtor

Date of Hearing: 05.12.2024

Hearing: 5th

Present: Mr.Rajan Hans, Adv. for the decree holders through video conference
None for the Judgment debtor

ORDER

Today, the case is fixed for submission of verified details of the property of judgment debtor by the decree holder.

Case was called several times but none has appeared on behalf of judgment debtor. No further wait is justified as it is already 03:00 P.M. Consequently, the judgment debtor is proceed against ex-parte in view of the provision of Order XXI Rule 105, CPC. It is not out of place to mention here that the Adjudicating Officer as an Executing Court has all the powers to exercise within the meaning of Section 40 of RERA Act, 2016 read with Rules

27 of HRERA Rules, 2017 as are exercised by a Civil Court while executing a decree.

Instead of filing the details of the property, an application for issuance of direction to the federation (RWA), for delivery of possession of the shop, in compliance of order dated 01.06.2023 passed by Hon'ble Authority at Panchkula in Complaint no.2751 of 2019, has been filed by the decree holder. In the said application following prayers have been made;

I To direct the RWA, California Country to provide the possession of the above mentioned unit.

II To Implead the RWA, California Country as a party to the Execution Complainant for furtherance of the legal process.

III Any other relief / direction that the Hon'ble Authority deems fit and proper in the facts and circumstances of the present complaint.

Heard.

This Forum has gone through the relief granted by Hon'ble Authority in Complaint no.2751 of 2019, decided on 01.06.2023, wherein Hon'ble Authority while deciding the dispute between the present decree holder and the present judgment debtor had made following observations in respect of the relief granted;

I Authority directs the respondent to handover the possession of the unit to the complainants.

II Authority further directs the respondent to pay delay interest to the complainant of ₹ 12,59,862/- and further pay monthly interest of ₹ 18,241/- till handling over of possession.

III Respondent is directed to make entire payment to the complainant as depicted above within 90 days from the date of this order, as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017.

5/11/2024
From the perusal of the contents of the complaint, the parties involved therein and the relief granted, it is clear that the dispute was between the allottee and the builder, wherein RWA had not been made a party, nor, the entire order of Hon'ble Authority has mention of RWA. Thus, it becomes debatable in this execution petition as to how this Forum in execution could pass directions to a party who has not been a party before the competent Authority order of which is under execution? Similarly, it is undisputed legal position that a party which was not impleaded before the main Court or the trial Court or the competent Authority, the said third party cannot be impleaded by an executing Court until and unless as per Order I Rule 10 CPC, the third party has a direct interest in the subject matter and the Court also recognizes their claim. It is also undisputed position of law that "an executing Court cannot

travel beyond decree.” To hold so this Forum has taken strength from law laid down in Shiv Shankar Gurjar vs Dilip 2014 (6) RCR (Civil) Page 678 (SC), Lekh Raj (Dead) through LRs v/s Ranjit Singh and Others 2018(1) RCR (Civil) 687 (SC) and Sneh Lata Goyal vs Pushap Lata and Others, 2019(1) RCR (Civil) 808 (SC). Here, it is apt to note that though the present execution petition has been filed under an order passed by Hon’ble Authority exercising powers granted by a special statute which has an overriding effect on the general law but still on the face of it, when the RWA was not a party before the Hon’ble Authority in the complaint and is neither the promoter or the builder and has also not approached this Forum to get oneself impleaded having interest in the cause, being third party to the execution it cannot be permitted to be impleaded as prayed for more so when the RWA in the instant case do not fall in the category of “promoter or the builder”, as the entire order of execution do not find mention of RWA.

With above observations, before this Forum dispose of this application on merit being not maintainable, give an opportunity to learned counsel for the decree holder to justify as to under which provision of law this Forum while exercising powers of an executing Court under Section 40 of the RERA Act, 2016 read with Rule 27 of the HRERA Rules, 2017, could grant the relief as prayed in the application dated 22.10.2024?

2. On request, case is adjourned to 20.02.2025 on the point of maintainability of the application dated 22.10.2024. It shall be last opportunity to argue.

05.12.2024

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MAJOR PHALIT SHARMA
ADSJ(Retd.)
ADJUDICATING OFFICER

