HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

EXECUTION NO. 1156 OF 2021
IN
COMPLAINT NO. 575 OF 2020

Daljit Singh Dahiya ....Complainant/Decree Holder

VERSUS

Parsvnath Developers Ltd. ....Respondent /Judgment Debtor

Date of Hearing: 01.12.2025

Hearing: 23rd

Present: Mr. R.P Dangi, for the decree holder through VC.
Ms. Rupali Verma, Adv., for the judgment debtor through VC.

ORDER (NADIM AKHTAR-MEMBER)

1. Today, the case is fixed for filing an affidavit in compliance with provisions of Order XXI Rule 41(2). As per the office report, the affidavit has not been filed till date by the judgment debtor.

2. The Authority is of the view that the judgment debtor failed to comply with orders of the Authority, therefore, judgement debtor is liable to be proceeded against under Order XXI Rule 41(3), CPC, as he did not obey the order passed under Order XXI Rule 41(2) CPC. Legally, it is mandatory for the judgment debtor to submit an affidavit as per the format provided in the Code of Civil Procedure and if the same is not filed, the Court or Authority in

Execution is bound to initiate action against the judgment debtor as per provisions of Order XXI Rule 41(3) CPC, so is being done in this case also.

3. Now, the question arises whether this Authority could issue show cause notice to the working directors of the judgment debtor company in the given circumstances wherein judgment debtor is a corporate entity?

It is a settled proposition of law that in case of a corporate entity, its share-holders or directors have their distinct entity. In other words, if the decree is against the company, the Executing Court generally cannot execute the decree against anyone other than the judgment debtor company or against the assets and properties of anyone other than the judgment debtor company. To hold so, this Authority has taken strength from the law laid down by Hon'ble Apex Court in Delhi Development Authority v/s Skipper Construction Company (Pvt. Ltd.) 1996(4) SSC 622. In the same judgment, Hon'ble Apex Court while reproducing the contents of judgment titled as "Aron Salomon v/s Salomon & Company Limited (1897 Appeal Cases 22)" had approved an exception to such general rule, by following the findings made at para 28 of the said judgment, which are reproduced below for ready reference;

> 28. "The concept of corporate entity was evolved to encourage and promote trade and commerce : but not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding

> others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned. The fact that Tejwant Singh and members of his family have created several corporate bodies does not prevent this Court from treating all of them as one entity belonging to and controlled by Tejwant Singh and family if it is found that these corporate bodies are merely cloaks behind which lurks Tejwant Singh and/or members of his family and that the device of incorporation was really a Play adopted for committing illegalities and/or to defraud people."

The contents of Para 28 of Salomon's judgment as reproduced above, grant extraordinary power to executing Court in the form of an exception, which to meet the ends of justice, can ignore the corporate character of the judgment debtor company, where it is formed to commit illegalities or to defraud hapless people e.g. Builders/promoters/facilitators like bankers, registered under the RERA Act, 2016, commit illegalities and play fraud upon the hapless investors/allottees who invest their hard earned money without knowing the ploy of such builders played with their sentiments, innocence and above all finances.

4. Having the above legal position in mind, now it is seen by this Authority, whether or not, in case in hand, wherein judgment debtor is a limited company and its Directors are not impleaded as a party in the main complaint final order of which is in execution, the Directors of the company who

otherwise are responsible for day to day functioning of the judgment debtor company, could be held responsible for disobedience of order passed by the Court under Order XXI Rule 41(2) and (3) of Civil Procedure Code, moreso when RERA Act, 2016 and HRERA, Rules, 2017 made thereunder are beneficial in nature, means are welfare oriented?

To answer this self imposed question, this Authority would first see the object of the Act, 2016, which reads as under.

SCOPE AND OBJECT

"The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardization and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardization has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasized in various forums.

2. In view of the above, it becomes necessary to have a Central legislation, namely the Real Estate (Regulation and Development) Bill, 2013 in the interests of effective consumer protection, uniformity and standardization of business practices and transactions in the real estate sector. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to

protect the interest of consumer in real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from directions or orders of the Authority.

3. The proposed Bill will ensure greater accountability towards consumers and significantly reduce frauds and delays as also the current high transaction costs. It attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchase, transparency of contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism. The proposed Bill will induct professionalism and standardization in the sector, thus paving the way for accelerated growth and investments in the long run."

The above described intent of Legislature, makes it clear that RERA Act and the Rules made thereunder, are made to protect the interest of the allottee or consumer and also to streamline the Builders'/Promoters'/facilitators' working system. Since, it is apparently a beneficial legislation, it has to be interpreted and implemented in such a manner that its object is achieved. To hold so this Authority 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. Similarly, it is also a settled proposition of law that the special

statute will prevail upon the general law. To say so, the latin maxim of "Generalia Specialibus non-derogant" is relied, which says "the general law does not derogate from the special" or that the 'this special law shall prevail over the general'. This principle of interpretation was approved in cases titled as Greenshield vs. The Queen (1958) SCR 216, State of Gujarat vs. Patel Ramji Bhai 1979 SCR 3788.

5. Having in mind the fact that RERA Act is beneficial in nature, further, it is to be seen whether sending a notice under Order XXI Rule 41(3) CPC to show cause as to why working Directors of the judgment debtor company, be not detained in civil detention for three months, even if not impleaded as judgment debtor, would be justified?

The answer to this question is in affirmative.

At the outset, it is apt to note here that notice under Order XXI Rule 41(2) CPC, was served upon the company, which at the time of getting registered with HRERA, Authority, had named its Directors & their details in A-II Proforma filed by builder at the time of registration of Project, to show that these are the one who are going to be responsible for day to day functioning of the registered company, even if the status of company is as that of a corporate entity. Not only this, these Directors are the one who after having passed the resolution, engaged counsel(s) to defend the case before Hon'ble Authority as well as before the executing Court. It means, the Directors of

the company under this special statute have a significant role in running of the Builder firm, thus making them liable to face the consequences of ill deeds committed in the name of company but otherwise practically for such ill deeds/ defaults/ violations of law, these Directors themselves are responsible. In other words, being beneficiaries of the violations committed in the name of the company registered under this special statute, Directors can't be given benefit of their own wrongs done by granting immunity from civil detention. In fact, this executing Court having in mind the intent and purpose of this special statute of RERA, 2016 & Rule, 2017, if decides not to proceed further under Order XXI Rule 41(3) against the judgment debtor company through its working Directors, it would be acting against the spirit of Act, 2016, as no action taken against the judgment debtor company would make order under consideration as non-executable, thus a big blow to the allottee/decree holder who despite having a favourable order against judgment debtor company, would be left penny loss. Otherwise also, in majority of the execution petition pending adjudication, the builder company alone is made a party and if today held immune from the action under Order XXI Rule 41(3), through its working Directors, that would be contrary to the object of the Act 2016.

6. Notwithstanding anything stated above, if it is inferred having in mind the general law that the working Directors of the company can't be touched

under Order XXI Rule 41(3) CPC, it would enable such Directors to use corporate entity as a shield to protect themselves from penal action under Order XXI Rule 41(3) CPC, despite the fact as per the documentation submitted for the company with RERA Authority, they are the one who are running the show for the company to gain benefits wrongly or rightly. Even, non-prosecution of such Directors would also be at the cost of the genuine interest of the decree holder who has been running from pillar to post to get his money back or possession of property, as the case may be, for years together.

7. In nutshell, this Authority in execution concludes that in this case of special statute, it is the duty of the executing Court to put a check on prima facie illegalities committed by the Directors of the judgment debtor company in the name of latter, who are using their company as a shield to prevent their detention in civil prison, despite having committed violations of the RERA Act, 2016 & Rules, 2017, and further have disobeyed the order passed under Order XXI Rule 41(2) CPC, and also of Authority's order under execution. In fact, it is a case, wherein if this Authority in execution of an order passed under beneficial legislature, does not ignore the corporate character of the judgment debtor company to look at the reality behind the corporate veil to pass an order under Order XXI Rule 41(3) CPC, against Directors, if their reply submitted in person to show cause notice(s) issued to Directors found

unsatisfactory, it would fail in doing justice and also to meet the real intent and purpose of the Act, 2016.

8. It would not be out of place to mention here that the working Directors responsible for day to day affairs of the judgment debtor company, can't feign knowledge of the notice sent under Order XXI Rule 41(2) CPC because, if they have knowledge of filing a complaint with the Authority and of an execution petition, they are well aware of all the orders passed during such proceedings. Hence, they are morally and legally bound to know above such order. In simple words, the order served upon the judgment debtor company is construed to be notice served upon its working Directors, warranting no separate notices sent under Order XXI Rule 41(2) CPC upon them, as they impliedly and expressly have knowledge of the same.

9. As the counsel for judgment debtor has requested to grant time for depositing a penalty of ₹10,000/-, she is granted an opportunity to deposit cost of ₹10,000/- before the next date of hearing. . If the same is not deposited before the next date of hearing, defence of the judgment debtor will be struck off.

10. Now, the case is adjourned to **23.03.2026** for submission of replies in person by the working Directors of the judgment debtor company to reply show cause notice served separately. It is further directed that in case of non-appearance of working Directors in person to submit reply to show cause notice on the date fixed, this Authority in execution while exercising powers of "Authority" within the meaning of Section 40 of the Act, 2016 read with

Rule 27 of Rule 2017 and Section 63 read with Section 76 of the Act, 2016, shall be within its legal power to impose penalty upon the Directors for not obeying executing Court's order. Hence, through the show cause notice to be served under Order XXI Rule 41(3) CPC, they are also cautioned and notified that their non-appearance on the date fixed would also attract penal action against them under Section 63 of the RERA Act, 2016. It is also not out of place to mention here that proceedings under Section 40 of the RERA Act, 2016 are independent that of the penal powers provided under Section 63 of the Act, hence, could legally be exercised by executing Court under the Act, 2016, simultaneously, as is held in CWP no.7738 of 2022 titled as "M/s International Land Developers Private Limited vs Aditi Chauhan and others."

11. In view of the above discussions, it is concluded that the named working Directors of the judgment debtor company with HRERA Authority at the time of its Registration (or updated subsequently, if any), are liable to be issued show cause notice as to why they should not be detained in civil detention up to three months as judgment debtor company for which they have been working to let it function, has intentionally disobeyed this Authority's order passed under Order XXI Rule 41(2) CPC? It is further directed to the decree holder to assist this Authority in providing correct verified particulars of the working Directors of the judgment debtor company collected from an authenticated official source within 30 days from today, for the purpose of issuance of show cause notice under Order XXI Rule 41(3)

CPC, failing which it shall be inferred that the decree holder does not want to prosecute this execution until and unless it has satisfactory reasons for not submitting the same within stipulated time.

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NADIM AKHTAR
[MEMBER]

Haryana Real Estate Regulatory Authority
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