HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Execution No. 1252 OF 2019

In

Complaint No. 565 of 2018

Narender Gupta ....DECREE HOLDER

VERSUS

Aerens Gold Souk Projects Hisar Pvt Ltd .... JUDGMENT DEBTOR

Date of Hearing: 05.10.2026

Hearing- 1st (re-open)

Present: - None present for the decree holder.

Ms. Diya Sareen, ex-managing director of judgment debtor company.

ORDER(NADIM AKTHAR-MEMBER)

1. The present execution petition was filed before the Authority for execution of the order dated 22.11.2018 passed by this Authority in complaint no. 565 of 2018, whereby the Authority had directed the respondent to refund the entire amount of ₹22,00,000/- paid by the decree holder, along with interest at the rate prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

2. The execution proceedings were first listed for hearing on 01.08.2019 and were thereafter taken up on various dates. Ultimately, vide order dated 24.11.2021, the execution petition was disposed of by the Authority by issuing a Recovery Certificate against the judgment debtor-company. The relevant directions contained in the said order are reproduced below:

> *"The Authority in exercise of powers conferred on it by Section 40 of the Real Estate (Regulation and Development) Act, 2016 and Rule 27 of Haryana Real Estate (Regulation and Development) Rules, 2017, for recovering decreed amount as arrears of land revenue and for executing the orders as a decree of the Civil Court, the Authority decides to issue recovery certificate against the company addressed to concerned District Collector with a direction to recover the decreed amount of ₹41,74,721/- from the respondents as arrears of land revenue and remit the same to the Authority after such recovery for further payment to the complainant."*
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> *"It has been brought to the notice of the Authority that liquidation proceedings are going on against respondent company. This Authority is, therefore, of the considered opinion that since these rights of the allottees have been held superior to any other law for the time being in force, the rights of the allottee, therefore, shall be treated superior to that of the rights of other creditors including the financial institutions."*
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> *"The allottees of the project in question shall be treated as deemed owners of the project. The promoters of the project and the lending financial institutions cannot alienate the ownership rights of the allottees at their own level without their consent. Therefore, the claim of the allottees against the assets of the project shall be treated superior to any other right of any other person or entity including the financial institutions and/or other creditors."*

"If claims of the allottees are not satisfied fully from the assets of the project in question, they shall be treated creditors of the promoters at par with other creditors for satisfaction of their claims from the assets of the promoters other than the assets of the project in question."

"The complainants and other similarly placed allottees may present these orders before any authority dealing with liquidation of assets of the Project, or the respondents and seek satisfaction of their claims on priority. It is, however, made clear that the claims of the allottees shall be restricted to the refund of the money paid by them to the respondents along with interest as provided for in Rule 15 of the HRERA Rules, 2017."

3. Pursuant to the aforesaid order dated 24.11.2021, a Recovery Certificate dated 29.12.2021 was issued to the Collector, Nuh for recovery of the decretal amount from the judgment debtor in accordance with law.

4. After the execution proceedings had been disposed of in the year 2021, the matter was reopened by the Authority pursuant to an application dated **21.07.2026** filed by the judgment debtor under Section 38 of the Real Estate (Regulation and Development) Act, 2016 read with Section 151 of the Code of Civil Procedure, 1908. By way of the said application, the judgment debtor has sought recall/cancellation of the Recovery Certificate dated 29.12.2021. In the said application, the judgment debtor has, inter alia, submitted that the respondent company is undergoing liquidation proceedings pursuant to the order dated 19.08.2019 passed by the Hon'ble High Court of Delhi and is under the supervision of the Official Liquidator. It has further been submitted

that the Authority, vide its order dated 24.11.2021, had taken note of the pending liquidation proceedings and had observed that the decree holder could present the said order before the Authority dealing with liquidation of the assets and seek satisfaction of his claim. The Judgment Debtor has further submitted that upon becoming aware of the liquidation proceedings, *the decree holder entered into an Agreement to Sell dated 05.04.2023 with M/s Cosmo Retail Solutions Pvt. Ltd. in respect of the subject unit for a total consideration of ₹22,00,000/-*. It has been stated that the said consideration was paid through two post-dated cheques and that the receipt thereof was acknowledged by the decree holder vide Receipt-cum-Acknowledgment Letter dated 31.08.2023. Under the aforesaid transaction, the decree holder relinquished his rights, title, claim and interest in respect of the subject unit. On this basis, the judgment debtor has contended that no subsisting claim remains against him and that the Recovery Certificate dated 29.12.2021 has consequently become infructuous and unenforceable. ***Accordingly, the Judgment Debtor has prayed for recall/cancellation of the Recovery Certificate dated 29.12.2021 on the ground that in view of the alleged settlement/transaction and relinquishment of rights by the decree holder, the decretal claim no longer survives.***

5. The Authority has considered the application dated 21.07.2026 filed by the judgment debtor, the documents annexed therewith and the submissions made during the hearing. The present application seeks recall/cancellation of the

Recovery Certificate dated 29.12.2021 issued pursuant to the order dated 24.11.2021 passed in the present execution.

6. The record reflects that the original order dated 22.11.2018 passed in complaint No. 565 of 2018 directed refund of the amount paid by the decree holder along with interest as prescribed under Rule 15 of the HRERA Rules, 2017. Subsequently, vide order dated 24.11.2021, the Authority issued a Recovery Certificate for recovery of the decretal amount of ₹41,74,721/- from the judgment debtor and for remittance of the recovered amount to the Authority for further payment to the decree holder.

7. The judgment debtor has now sought recall of the said Recovery Certificate on the basis of the subsequent transaction entered into by the decree holder in respect of the subject unit. In support of its application, the judgment debtor has placed on record a copy of the Agreement to Sell dated 05.04.2023, annexed as Annexure A-3 at pages 15 to 19 of the application dated 21.07.2026. The judgment debtor has further placed on record a Receipt-cum-Acknowledgment Letter dated 31.08.2023, annexed as Annexure A-4 at page 20, along with copies of the cheques relied upon in support of the said transaction.

8. As per the documents placed on record, the transaction dated 05.04.2023 relates to the subject unit in respect of which the original claim before the Authority had arisen. The judgment debtor has specifically pleaded that pursuant to the said transaction, the consideration agreed between the

concerned parties was ₹22,00,000/- and that the Receipt-cum-Acknowledgment Letter dated 31.08.2023 records the receipt/acknowledgment of the consideration and relinquishment of the rights, title, claim and interest of the decree holder in respect of the subject unit.

9. The Authority further observes that the transaction relied upon by the judgment debtor is subsequent to the order dated 24.11.2021 and the issuance of the Recovery Certificate dated 29.12.2021. Further, the decree holder's signatures appear on every page of the document, further suggesting that the terms were duly acknowledged and accepted. Therefore, the subsequent transaction is required to be considered for determining whether the monetary claim which was sought to be enforced through the Recovery Certificate continues to survive.

10. In this regard, the Authority observes that the relief granted in favour of the decree holder under the order dated 22.11.2018 was essentially a monetary relief, which was thereafter sought to be enforced through the Recovery Certificate dated 29.12.2021. The Recovery Certificate was issued for recovery of the decretal amount for the benefit of the decree holder. Consequently, where the decree holder has, subsequent to the issuance of the Recovery Certificate, voluntarily entered into a transaction in respect of the subject unit and has acknowledged receipt of the consideration and relinquished his rights, title, claim and interest in respect thereof, the

continuation of recovery proceedings for enforcement of the earlier monetary claim would require reconsideration.

11. The Authority also takes note of the fact that the documents relied upon by the judgment debtor are not merely in the nature of an unsubstantiated assertion. The Agreement to Sell dated 05.04.2023, Receipt-cum-Acknowledgment Letter dated 31.08.2023 and copies of the cheques have been placed on record in support of the transaction. The said documents collectively indicate that the parties had subsequently acted upon an arrangement whereby the decree holder agreed to relinquish his claim/interest in respect of the subject unit against the consideration recorded therein.

12. The Authority is further of the view that once the decree holder has voluntarily entered into the subsequent arrangement and accepted/acknowledged the consideration thereunder, the same cannot be ignored while continuing execution of a monetary claim arising from the earlier transaction. The purpose of the Recovery Certificate was to secure recovery of the amount adjudicated in favour of the decree holder. In view of the subsequent settlement/transaction and relinquishment of the claim by the decree holder, no useful purpose would be served by continuing the recovery proceedings for enforcement of the same claim.

13. The Authority also observes that the transaction relied upon by the judgment debtor is of the year 2023, whereas the present application seeking recall of

the Recovery Certificate has been filed subsequently on 21.07.2026. The judgment debtor has thus specifically brought the subsequent development on record and has sought consequential recall of the Recovery Certificate and the recovery proceedings initiated pursuant thereto.

14. In the circumstances, and particularly in view of the subsequent settlement/transaction and relinquishment of the claim by the decree holder, the Authority finds that the decretal claim which was sought to be enforced through the Recovery Certificate dated 29.12.2021 no longer survives for the purpose of continuation of the present recovery proceedings.

15. The Authority further finds support for the aforesaid view from the judgment of the Hon'ble Supreme Court in ***Wg. Cdr. Arifur Rahman Khan & Ors. v. DLF Southern Homes Pvt. Ltd.***, decided on 24.08.2020 and reported as 2020 SCC OnLine SC 667, wherein the Hon'ble Supreme Court, in para 37, considered the cases of purchasers who had entered into specific settlement deeds with the developer and observed as under:

> *"However, the cases of the eleven purchasers who entered into specific settlement deeds with the developers have to be segregated. ... These eleven flat purchasers having entered into specific deeds of settlement, it would be only appropriate and proper if they are held down to the terms of the bargain. We are not inclined to accept the contention of the learned Counsel of the Appellants, Mr. Prashant Bhushan, that the settlement deeds were executed under coercion or undue influence since no specific material has been produced on record to demonstrate the same."*

16. The aforesaid principle, though rendered in the context of specific settlement deeds, is equally relevant for examining the subsequent arrangement relied upon in the present case. The record contains an Agreement to Sell dated 05.04.2023 and a Receipt-cum-Acknowledgment Letter dated 31.08.2023, along with copies of the cheques relied upon in support thereof. The said documents evidence a subsequent transaction in respect of the subject unit, pursuant to which the decree holder is stated to have received the agreed consideration and acknowledged relinquishment of his rights, title, claim and interest in the subject unit. No material has been placed on record to demonstrate that the said transaction was entered into under coercion, undue influence, fraud or misrepresentation. The subsequent conduct of the decree holder as reflected from the aforesaid documents assumes significance while determining whether the claim forming the subject matter of the present execution continues to survive.

17. Accordingly, the application dated 21.07.2026 filed by the judgment debtor is **allowed**. The Recovery Certificate dated 29.12.2021 issued pursuant to the order dated 24.11.2021 is hereby recalled/cancelled. Consequently, all warrants, notices and other recovery proceedings issued pursuant to the said Recovery Certificate shall also stand recalled.

18. Office is directed to send an intimation to the Collector, Nuh, to whom the Recovery Certificate dated 29.12.2021 was issued, informing him of the

present order and consequentially directing that no further action be taken pursuant to the said Recovery Certificate.

19. In view of the aforesaid subsequent transaction dated 05.04.2023 and the recall of the Recovery Certificate and consequential recovery proceedings, no further proceedings survive in the present execution. The present execution is accordingly **disposed of**.

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

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NADIM AKHTAR
[MEMBER]