# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

**Execution No. 2678 OF 2019**

**In**

**Complaint No. 481 of 2018**

Alka Angurala and Ajay Kumar Kaundal ....DECREE HOLDERS

VERSUS

Gold Souk Infrastructure .... JUDGMENT DEBTOR

**Date of Hearing:** 05.10.2026

**Hearing-** 1st (re-open)

**Present:** - Adv. Alankar Narula, counsel 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 28.02.2019 passed by this Authority in complaint no. 481 of 2018, whereby the Authority had directed the respondent to refund the entire amount paid by the decree holder, along with interest.

2. The execution proceedings were first listed for hearing on 30.10.2018 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:

> *"Authority decides to explore alternative remedy of exercising its 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 the decreed amount as arrears of land revenue and for executing orders as decree of the civil court. Accordingly, Authority decides to issue recovery certificate against the company addressed to concerned District Collector with a direction to recover the decreed amount of ₹22,36,865/- (Principal amount of ₹39,11,906/- + interest of ₹16,75,041/- @10.75 till 24.11.2021) from the respondents as arrears Of land revenue and remit the same to the Authority after such recovery for further payment to the complainant. The District Collector shall send a Compliance report to this Authority. Necessary action be accordingly taken .*
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> *It has been brought to the notice of Authority that liquidation proceedings are going on against the respondent company, therefore, Authority considers it just and fair to grant similar rights to the complainant as have been granted to allottees in a bunch of cases in lead case No. 383/2018 titled Gurbaksh Singh versus ABW Infrastructure Pvt Ltd., in which Authority had inter alia ordered as follows: -*
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> *"We are ofthe considered view that the right granted to an allottee by the amendment ordinance of 2018 is a value-able right and that right can be pressed before the appropriate forum/authority for satisfaction Of their claims against the promoters/debtors. However, we are of the further view that*

*the rights guaranteed by the RERA Act, 2016 for protection Of allottees are very wide in nature and must be interpreted accordingly. As already stated in the arguments listed in Para IO above that the allottees of a project, after having paid the EDC and substantial amount of money to the developer should be treated as deemed owners of the proportionate piece of the land and assets Of the project, and their rights cannot be alienated by way Of an agreement made between the promoter and the lending financial institution. Rights of the allottees must be treated superior to the rights of the lending financial institutions. The financial institutions, in so far as the assets Of the related real estate project are concerned, are free to satisfy the claims from the remainders of the assets of the project after satisfaction Of the claim of the allottees, and in addition they are free to set their claim satisfied from Other assets of the promoters. They can press their claim even against the sureties and guarantees offered by the promoters.*

*The aforesaid conclusion that the rights Of the allottees should be treated superior to those of Other financial creditors are also supported by the principles of natural justice and the express provisions of RERA Act, 2016. In support of these arguments, it is observed as follows: -*

*(i) The financial institutions are expert agencies which carry out due diligence about the promoter as well as his project before taking decision to lend money. They have expert manpower and machinery to adjudge the viability of the project and the creditworthiness of the promoters. They have capability to understand risk factors involved Accordingly, at the stage of lending, either they are fully aware of the facts that full or a portion of the project has been allotted to the allottees, thus creating third party rights, or they are fully aware that the allotments will be made by the promoters in future, thereby creating third party interests in the assets hypothecated or kept with them as security. It is to be presumed that lenders have factored-in these facts at the time of lending. Lending institutions are also supposed to monitor*

*progress of the project in order to ensure that money lent by them is safe and is invested properly in the project. If the money lent by them is diverted or siphoned away, they must also share burden for the same for the purpose of protecting the rights of ordinary citizens. If the lenders fail to monitor the Project closely and if their loan is not repaid in time, they themselves also must share the blame. The allottee, however, must not suffer on behalf of the promoter or the financial institution.*

*(ii) On the other hand, an allottee typically is a middle- class person who harbours the dream of owning a house for his family. Savings of two or three generations usually have to be mobilized to own a house. He invests money on the basis of assurances held out to him by the promoters and the State Government agencies. He cannot access or understand the account of the project nor does he have any power to monitor progress of the project on day-to-day basis. The principles of natural justice, therefore, dictate that the rights of the allottees should be treated superior and higher to those of the financial institutions.*

*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.*

*(i) 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*

*(1) 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.

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 course of hearing. The present application seeks recall/cancellation of the Recovery Certificate dated 29.12.2021 issued in pursuance of the order passed in the present execution proceedings.

6. The record reflects that the original proceedings arose out of the allotment of Unit No. TB-608, situated in Tower-B, admeasuring 1350 sq. ft., in the

project namely "Gold Souk Golf Links", Sector-17, Sohna, Haryana. The decree holder had deposited a sum of ₹22,36,865/- with the Judgment Debtor in respect of the said allotment. Pursuant to the dispute between the parties, the matter came to be adjudicated before the Authority and the recovery proceedings were thereafter initiated for enforcement of the amount due to the decree holder. Pursuant to the order passed in the present proceedings, a Recovery Certificate dated 29.12.2021 was issued against the Judgment Debtor. The said Recovery Certificate was issued for recovery of the amount due to the decree holder in respect of his claim arising from the aforesaid allotment. ***The Judgment Debtor has now sought recall/cancellation of the said Recovery Certificate on the ground that the dispute between the parties had already been amicably settled. In support of the application, the Judgment Debtor has placed on record a copy of the Memorandum of Understanding dated 27.12.2021, annexed as Annexure A-1, recording the settlement arrived at between the decree holder, the Judgment Debtor and M/s Supertech Limited.***

7. As per the said settlement, it was agreed that in lieu of the original Unit No. TB-608 in the project "Gold Souk Golf Links", the decree holder would be allotted an alternate unit/plot in a project developed by M/s Supertech Limited and that the amount of ₹22,36,865/- paid by the decree holder to the Judgment Debtor would be transferred towards the said alternate allotment.

8. The Judgment Debtor has further placed on record a **Cancellation-cum-Settlement Deed dated 27.12.2021**, annexed as Annexure A-2, executed between the decree holder and the judgment debtor. The said document records cancellation of the documents relating to the original allotment, including the Application Form dated 04.11.2014, Provisional Allotment Letter dated 06.11.2014 and the Apartment Buyer Agreement pertaining to Unit No. TB-608 dated 17.03.2015. The document further records the settlement arrived at between the parties in respect of the said allotment.

9. The Judgment Debtor has also placed on record the letter dated 27.12.2021 stated to have been issued by the decree holder, whereby the decree holder requested the Judgment Debtor to transfer the settled amount of ₹22,36,865/- to M/s Supertech Homes Pvt. Ltd. towards Plot No. 505, "Sambhav Homes", Sector-17, Sohna. The Judgment Debtor has further relied upon the Transfer Note dated 27.12.2021, whereby the transfer of the aforesaid amount towards the alternate allotment was recorded.

10. The Authority further takes note of the Booking Receipt No. 5000035 dated 04.12.2020 and Transfer Receipt No. 900020 dated 20.01.2022, relied upon by the judgment debtor in support of its contention that the amount paid by the decree holder stood adjusted/transferred towards the alternate allotment in "Sambhav Homes". These documents have been placed on record as Annexure A-4 (colly.).

11. The aforesaid documents, when read collectively, indicate that the parties had entered into a specific arrangement in respect of the very subject matter from which the original claim of the decree holder had arisen. The original allotment of Unit No. TB-608 was cancelled and, in lieu thereof, the decree holder accepted an alternate allotment in "Sambhav Homes", Sector-17, Sohna, with the amount of ₹22,36,865/- being transferred/adjusted towards such alternate allotment.

12. An important aspect of the present matter is that the arrangement relied upon by the Judgment Debtor is not based merely upon a unilateral assertion made in the application. The Judgment Debtor has placed on record contemporaneous documents executed by and/or acknowledged by the decree holder, including the Memorandum of Understanding dated 27.12.2021, Cancellation-cum-Settlement Deed dated 27.12.2021 and the letter dated 27.12.2021 requesting transfer of the settled amount towards the alternate allotment.

13. The Authority further observes that the documents relied upon by the Judgment Debtor specifically concern the same Unit No. TB-608 in respect of which the original claim had arisen. The Cancellation-cum-Settlement Deed records cancellation of the original allotment documents, while the subsequent transfer documents record adjustment/transfer of the amount of ₹22,36,865/- towards the alternate allotment. Thus, the arrangement was not an independent transaction unrelated to the original claim; rather, it

constituted a settlement and substitution of the original allotment arrangement.

14. The Authority is therefore required to examine whether, in view of the aforesaid settlement and the conduct of the decree holder pursuant thereto, the monetary claim which was sought to be enforced through the Recovery Certificate dated 29.12.2021 continues to survive.

15. In this regard, the Authority observes that the purpose of the recovery proceedings was to secure enforcement of the monetary claim of the decree holder arising from the original allotment of Unit No. TB-608. Once the decree holder voluntarily entered into a settlement whereby the original allotment was cancelled and the amount paid by him was agreed to be transferred/adjusted towards an alternate allotment, the subsequent arrangement becomes relevant for determining whether the original monetary claim continues to remain enforceable.

16. The Authority further observes that the settlement documents relied upon by the Judgment Debtor specifically record the cancellation of the original allotment and the arrangement for an alternate allotment. The decree holder thereafter requested transfer of the settled amount of ₹22,36,865/- towards Plot No. 505, "Sambhav Homes", Sector-17, Sohna. The Transfer Note and the subsequent Transfer Receipt dated 20.01.2022 lend further support to the contention that the settlement was acted upon.

17. The fact that the Recovery Certificate dated 29.12.2021 came to be issued around the same period does not, by itself, render the settlement arrangement irrelevant. The material consideration is whether the decree holder, having voluntarily entered into the settlement arrangement and having acted upon the same, can thereafter continue to seek enforcement of the original monetary claim as though the settlement had not taken place.

18. The Authority is of the considered view that the decree holder cannot simultaneously rely upon the settlement arrangement for cancellation of the original allotment and transfer of the amount towards an alternate allotment, and thereafter seek enforcement of the very monetary claim arising from the cancelled allotment, without first establishing that the subsequent arrangement had ceased to operate or had been lawfully rescinded or otherwise rendered ineffective.

19. The principle that parties who have voluntarily entered into a specific settlement are bound by the terms thereof also finds support 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, while considering purchasers who had entered into specific settlement deeds with the developer, observed in para 37 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.*

20. The aforesaid principle is relevant to the facts of the present case. The record contains a specific Memorandum of Understanding and a Cancellation-cum-Settlement Deed dated 27.12.2021, followed by a letter from the decree holder requesting transfer of the settled amount towards the alternate allotment. The documents relied upon by the Judgment Debtor therefore demonstrate a conscious and specific arrangement between the parties concerning the subject unit and the amount paid thereunder.

21. The Authority further observes that no material has been placed on record in the present application to demonstrate that the aforesaid settlement documents were executed under coercion, undue influence, fraud or misrepresentation. The documents relied upon are specific in their terms and are accompanied by subsequent documents evidencing transfer/adjustment of the amount towards the alternate allotment.

22. The subsequent conduct of the decree holder assumes significance in the present matter. The decree holder did not merely sign a settlement document; rather, as per the documents placed on record, he requested transfer of the settled amount towards the alternate allotment in "Sambhav Homes". The

subsequent Transfer Receipt dated 20.01.2022 further indicates that the arrangement was acted upon.

23. The Authority is therefore of the view that once the original allotment stood cancelled pursuant to the settlement and the amount paid towards the original allotment was transferred/adjusted towards the alternate allotment accepted by the decree holder, the original monetary claim arising from the cancelled allotment cannot be permitted to be enforced independently, unless the subsequent settlement is first shown to have been validly terminated or otherwise rendered ineffective.

24. The Authority also takes note of the fact that the application for recall of the Recovery Certificate has been filed by the Judgment Debtor on 21.07.2026, specifically bringing the aforesaid settlement and subsequent documents on record and seeking consequential recall of the Recovery Certificate. The Judgment Debtor has thus sought adjudication of the effect of the settlement on the subsisting enforceability of the Recovery Certificate.

25. In the circumstances, the Authority finds that the documents placed on record establish that the decree holder's original allotment in Unit No. TB-608 was cancelled pursuant to the settlement arrangement and that the amount of ₹22,36,865/- was agreed to be transferred/adjusted towards the alternate allotment in "Sambhav Homes", Sector-17, Sohna. The original transaction, therefore, stood substituted by the subsequent arrangement between the concerned parties.

26. The Authority is consequently of the considered view that continuation of the recovery proceedings for enforcement of the original monetary claim, despite the subsequent settlement and substitution of the original allotment arrangement, would not serve any useful purpose. The Recovery Certificate was issued for securing the claim of the decree holder arising from the original transaction. Once the decree holder voluntarily acted upon the settlement concerning that very transaction, the original claim cannot be simultaneously enforced without giving effect to the settlement.

27. Accordingly, the Authority finds that the monetary claim sought to be enforced through the Recovery Certificate dated 29.12.2021 does not survive for the purpose of continuation of the present recovery proceedings, in view of the settlement arrangement and the subsequent conduct of the parties as reflected from the documents placed on record.

28. In view of the aforesaid discussion, the application dated 21.07.2026 filed by the Judgment Debtor is **allowed**. The Recovery Certificate dated 29.12.2021 issued in respect of the present execution is hereby **recalled/cancelled**. Consequently, all warrants, notices and other recovery proceedings, if any, issued pursuant to the aforesaid Recovery Certificate shall also stand recalled.

29. Office is directed to send an intimation notice to the Collector, Nuh, to whom the Recovery Certificate dated 29.12.2021 was issued, informing him of the present order and directing that no further action be taken pursuant to the said Recovery Certificate.

30. In view of the settlement arrangement dated 27.12.2021, cancellation of the original allotment and transfer/adjustment of the settled amount towards the alternate allotment, no further proceedings survive in the present execution. The present execution is accordingly **disposed of**.

31. 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]**