

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.62 of 2020
Date of Decision: 28.10.2020**

M/s Landmark Apartments Pvt. Ltd. Plot No.65, Institutional Area, Sector 44, Gurugram, Haryana.

Appellant

Versus

Santosh Chauhan

Present Address: H.No.19/4, Dharma Colony, Palam Vihar Extension, Gurugram, Haryana

Permanent Address: A-455, Sector 1, LDA Colony, Kanpur Road, Kucknow-220812.

Respondent

CORAM:

Justice Darshan Singh (Retd.)	Chairman
Shri Inderjeet Mehta	Member (Judicial)
Shri Anil Kumar Gupta	Member (Technical)

Argued by: Shri Shobit Phutela, Advocate, Id. counsel for appellant.
Shri Pankaj Kumar Dua, Advocate, Id. counsel for respondent.

[The aforesaid presence is being recorded through Video Conferencing since the proceedings are being conducted in virtual court.]

ORDER:

JUSTICE DARSHAN SINGH (Retd.) CHAIRMAN:

The present appeal has been filed against the order dated 11.12.2019 passed by learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called the

‘Authority’) during the execution proceedings in Case No.E/69/144/2018.

2. Learned counsel for the appellant at the motion stage has raised only two issues viz (i) that the learned Authority had no jurisdiction to execute the order as per Rule 27 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter called the ‘Rules’) and (ii) that the order was nullity as the learned Authority had ordered the refund which was also beyond the jurisdiction of the learned Authority.

3. On the other hand, learned counsel for the respondent contended that there is no merit in the present appeal in view of the amendment of the Rules whereby the learned Authority has been authorised to issue direction for refund of the amount and to execute the order, direction and decision passed by it, as if it was a decree of the Civil Court.

4. We have duly considered the aforesaid contentions.

5. The Government of Haryana has amended the Rules vide Notification The 12th September, 2019. The un-amended Rule 27 of the Rules reads as under: -

“27. Enforcement of order, direction or decision of adjudicating officer, Authority or Appellate Tribunal. Section 40 – (1) Every order passed by the adjudicating officer or the Authority or the Appellate Tribunal, as the case may be, under the Act or rules and the regulation made thereunder, shall be enforced by an adjudicating

officer of the Authority or Appellate Tribunal in the same manner as if it were a decree or a order made by a civil court in a suite pending therein; and it shall be lawful for the adjudicating officer or the Authority or the Appellate Tribunal, as the case may be, in the event of its inability to execute the order, send such order to the civil court, to execute such order.

(2) The court may, for the purposes for compounding any offence punishable with imprisonment under the Act accept an amount as specified in the Table below: -

<i>Offence</i>	<i>Amount to be paid for compounding the offence</i>
<i>Punishable with imprisonment under sub section (2) of section 59.</i>	<i>Five to ten percent of the estimated cost of the real estate project.</i>
<i>Punishable with imprisonment under section 64</i>	<i>Five to ten percent of the estimated cost of the real estate project</i>
<i>Punishable with imprisonment under section 66</i>	<i>Five to ten percent of the estimated cost of the plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated.</i>
<i>Punishable with imprisonment under section 68</i>	<i>Five to ten percent of the estimated cost of the plot, apartment or building, as the case may be.”</i>

6. The above said rule has been amended as under: -

“In the said rules, in rule 27, in sub-rule (1), for the words “regulation” and “adjudicating

officer of”, the words “regulations” and “adjudicating officer or” respectively shall be substituted.”

7. In the aforesaid amendment of the Rules, the word “of” after the word “adjudicating officer” has been substituted with word “or”. So, as per the amended rules, the adjudicating officer or the Authority or the Appellate Tribunal are competent to execute the order, direction and decision passed by it, as if it was a decree of the Civil Court.

8. During the pendency of this appeal, the Division Bench of our Hon’ble High Court has decided bunch of cases, the lead case being **CWP No.38144 of 2018, Experion Developers Pvt. Ltd. Versus State of Haryana and others**, decided on 16.10.2020 wherein the Hon’ble High Court has categorically laid down as under: -

“60. On a collective reading of Sections 71 and 72 of the Act, the legislative intent becomes explicit. This is to limit the scope of the adjudicatory powers of the AO to determining compensation or interest in the event of violation of Sections 12, 14, 18 and 19 of the Act. To recapitulate, the question of compensation arises only in relation to the failure of the promoter to discharge his obligations. Therefore, in a complaint for compensation or interest in terms of Section 71 of the Act, the complainant would be the allottee and the Respondent would be the promoter. However, the powers of the Authority

to inquire into complaints are wider in scope. As is plain from Section 31 of the Act, a complaint before the Authority can be against “any promoter/allottee, real estate agent, as the case may be.” It is, therefore, not correct to equate the adjudicatory powers of the Authority with that of the AO as they operate in different spheres. Even vis-à-vis the promoter, complaints seeking reliefs other than compensation or interest in terms of Section 71 read with Section 72 of the Act, the powers of adjudication are vested only with the Authority and not with the AO. The submission that since disputes under the Act would involve determining if the clauses of an agreement of sale have been complied with by either party and that such a ‘lis’ can be adjudged only by the AO, is also not acceptable. There is no reason why the Authority cannot examine such a question if it were to arise for determination in a complaint before it. In any event, the Authority’s decisions are amenable to judicial review in two further appeals, once by the Appellate Tribunal and, thereafter, by the High Court.

9. It was further laid down by the Hon’ble High Court as under: -

“63. Although, the Act does use distinct expressions like ‘refund’, ‘interest’, ‘penalty’ and ‘compensation’, a collective reading of the provisions makes it apparent that when it comes to refund of the amount, and interest on

the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the Authority which has the power to examine and determine the outcome of a complaint. This Court finds merit in the contention on behalf of the Respondents that the expression 'interest' as used in Section 18 of the Act is a pre-determined rate, as may be fixed by the government, and is distinct from the interest by way of compensation that has to be computed by the AO in terms of Section 71 (3) keeping in view the factors outlined in Section 72 of the Act. When it comes to the question of seeking the relief of compensation or interest by way of compensation, the AO alone has the power to determine it on a collective reading of Sections 71 and 72 of the Act."

10. In view of the aforesaid ratio of law laid down by the Hon'ble High Court, the learned Authority had jurisdiction to entertain and adjudicate upon the complaints wherein there was claim for refund/return of the amount alongwith interest.

11. The Hon'ble High Court has further laid down that the amended rules shall be applicable retrospectively as the amendment is procedural one and the pending complaints shall be decided as per the amended rules. Reference can be made to para no.72 of the aforesaid judgment in **Experion Developers Pvt. Ltd. Versus State of Haryana and others'** case (Supra), which reads as under: -

“72. In view of the settled legal position, the position that emerges is this. As long as the complaint is yet to be decided as on the date of the notification publishing the Haryana Amendment Rules 2019, that will now be decided consistent with the procedure outlined under the amended Rules 28 and 29 of the Haryana Rules. In other words, if the pending or future complaint seeks only compensation or interest by way of compensation, and no other relief, it will be examined only by the AO. If the pending or future complaint seeks other reliefs i.e. other than compensation or interest by way of compensation, the complaint will have to be examined by the Authority and not the AO. If the pending or future complaint seeks a combination of reliefs, the complaint will have to be examined first by the Authority. If the Authority finds there to be a violation of Sections 12, 14, 18 and 19 of the Act by the promoter, and the complaint is by the allottee, then for determining the quantum of compensation such complaint will be referred by the Authority to the AO in terms of the amended Rule 28 of the Haryana Rules. A complaint that has already been adjudicated prior to the coming into force of the amended Rules 28 and 29 of the Haryana, and the decision has attained finality, will not stand reopened.”

12. Thus, in view of the amended rules which have become applicable to the present proceedings and the authoritative pronouncement of the Hon'ble High Court in

Experion Developers Pvt. Ltd. Versus State of Haryana and others' case (*Supra*), the contentions raised by learned counsel for the appellant are without any substance.

13. Consequently, the present appeal has no merits and the same is hereby dismissed.

14. Copy of this judgment be communicated to learned counsel for the parties/parties and the learned Authority.

15. File be consigned to the records.

Announced:
October 28th, 2020

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

CL