

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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**Appeal No.63 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

Amit Sharma, H.No.47, Sector 1-A, Trikuta Nagar,  
Jammu180012

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 Vipin Kumar, 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/130/1143/2018.

2. Learned counsel for the appellant has contended that as per the original rules, the learned Authority had no jurisdiction to execute its order. He has drawn our attention to un-amended Rule 27 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter called the 'Rules'). He further contended that the amendment of Rule 27 will not apply to the present proceedings.

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 execute the order, direction and decision passed by it, as if it was a decree of the Civil Court. In support of his contentions, learned counsel for the respondent has relied upon the authoritative pronouncement of the Division Bench of our Hon'ble High Court in a 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.

4. We have duly considered the aforesaid contentions.

5. The only plea raised by learned counsel for the appellant is that as per Rule 27 of the Rules, the learned Authority had no jurisdiction to execute its own order.

6. The Government of Haryana has amended the Rules vide Notification The 12<sup>th</sup> 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 imprisonment under section 66</i>	<i>with under</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 imprisonment under section 68</i>	<i>with under</i>	<i>Five to ten percent of the estimated cost of the plot, apartment or building, as the case may be.”</i>

7. 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.”*

8. 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.

9. The Hon’ble High Court in ***Experion Developers Pvt. Ltd. Versus State of Haryana and others’*** case (Supra) has 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, 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.”*

10. 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.

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

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

13. File be consigned to the records.

Announced:  
October 28<sup>th</sup>, 2020

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

Inderjeet Mehta  
Member (Judicial)

Anil Kumar Gupta  
Member (Technical)

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