



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint no. :- 290 of 2021

Date of Institution: -09.03.2021

Date of Decision:- 06.07.2021

M/s B.P.T.P. Ltd, through Director/Authorized representative, M-11, Middle Circle, Connaught Circus, New Delhi-110001

...COMPLAINANT

Versus

Madhu Nigam w/o Ishwar Sharma, r/o 699, sector-28, Faridabad, Haryana-121008

...RESPONDENT

Hearing-6th

Present: - Mr. Hemant Saini Advocate and Mr. Himanshu Monga Advocate, Counsel for the applicant

Mr. Salik Shafique Advocate and Mr. Kazi Sangay Thupden Advocate, Counsel for the respondent/ allottee through video conferencing.

ORDER:-

1. This order shall dispose of application dated 08.03.2021 for recalling of order dated 04.03.2021 in Complaint no. 636/2020 titled as Madhu Nigam vs BPTP Pvt Ltd.

Saeela Gupta

2. It has been argued by ld. counsel for the applicant that the main complaint bearing no. 636/2020 titled as Madhu Nigam vs BPTP Pvt Ltd was fixed for arguments. Ld. counsel for the complainant had completed his arguments on 12.01.2021 and the case was adjourned for arguments of counsel for the respondent, present applicant. On 18.02.2021 counsel for the respondent, present applicant had advanced his arguments and had referred two judgements of Hon'ble Apex Court viz. 1958 AIR (SC) 770 titled as Ganga Dhar vs Shankar Lal and 2000 AIR (SC) 1935 titled as Shivdev Singh vs Sucha Singh. After concluding arguments by ld. counsel for the respondent, counsel for complainant had sought time to file written submissions and calculations pertaining to delay interest. On 25.02.2021 ld. counsel for the complainant had filed written submissions as well as calculations. Ld. counsel for respondent wanted to file counter-calculations. Counter-calculations were filed by the respondent on 04.03.2021. It has been pointed out by ld. counsel for applicant that in calculation sheet, one calculation was filed as per **Builder Buyer Agreement** and it was containing, first with force majeure which comes to ₹ 3,97,680/- and without force majeure the amount comes to ₹ 5,92,512/-. The second set of calculation of compensation as per SBI MCLR+2% in accordance with judgement in complaint no. 113/2018 titled as Madhu Sareen vs BPTP Pvt Ltd decided by Hon'ble Authority on 16.07.2018, the compensation comes to ₹ 15,50,570/-. It was never offered by counsel for the respondent-applicant. Judgement in

Madhu Sareen's case is under challenge before Hon'ble Apex Court which is being contested by counsel for the applicant. Since arguments in the main case have been advanced by both counsel for the parties, counsel for the applicant remained under impression that next date of hearing would be given after filing of counter-calculations. Counsel for the respondent-applicant was contesting the case on merits. He had never offered to pay the higher amount of compensation to the complainant. It was mis-communication and inadvertent mis-appreciation of the events. The arguments were yet to be concluded. It was never the case that amount of ₹ 15,50,570/- was offered to be paid as compensation by the respondent to the complainant and it was accepted by complainant or his counsel. Three types of calculations were prepared as comparative table to enable the Court to deliberate upon the issue and decide on merits the quantum of compensation. In the original complaint, the complainant has prayed for delay interest under section 18 of RERA Act, 2016 and Rule 15 of HRERA Rules, 2017 in the garb of compensation, whereas delay interest is being granted by Hon'ble Authority. Sh. Hemant Saini, Advocate was appearing before Hon'ble Authority till 2pm and after that he left the Court premises leaving Sh. Himanshu Monga Advocate before this Court as only counter-calculations were to be submitted and arguments were to be advanced on next date of hearing. Sh. Hemant Saini Advocate was having no. of cases listed before Hon'ble Real Estate Appellate Tribunal on next day. Due to miscommunication and inadvertent mis-appreciation of the

events before this Court by the office of the applicant, it had happened. Ld. counsel for applicant has prayed for hearing the case on merits by recalling order dated 04.03.2021 passed by this Court.

3. To rebut the arguments of ld. counsel for applicant, it has been argued by ld. counsel for the respondent/allotee that ld. counsel for applicant has wrongly pleaded that while submitting counter-calculations amount of ₹ 15,50,570/- was not offered by the counsel for the applicant. The settlement was arrived at with concurrence of counsel for the respondent, present applicant. It is not case of the applicant that BPTP was not represented by any counsel. Even if Mr. Hemant Saini Advocate was attending the proceedings before Hon'ble Authority till 2 pm and had gone after that, yet BPTP was being represented by Sh. Himanshu Monga Advocate. It is also not disputed that arguments were not heard at length and after filing of written submissions, calculations and counter-calculations were filed by both the parties. Now the respondent is backtracking on previous statement made before this Court with the sole object of delaying the execution of order. Recall of order can be made in exceptional circumstances. There is no urgency or exceptional circumstances. The order passed by the Court cannot be recalled on vague grounds. As per various judgements of Hon'ble Apex Court and Tribunal, the power to recall order has to be exercised when either fraud has been committed or opposite party has not been heard. If the order has been obtained by fraud or mis-representation or the counsel for affected

party cannot be present on account of urgent need or the applicant was not being given an opportunity to be heard or respondent could not be served. Order dated 04.03.2021 passed by this Court has attained finality and it is the abuse of process of Court to permit recall of order merely on vague ground that Sh. Hemant Saini Advocate was not present before this Court and was present before Hon'ble Authority. The counsel for the applicant is trying to mislead the Court. So far as judgement in Neelkamal Realtors's is concerned, it has not been stayed by Hon'ble Apex Court. Ld. counsel for the respondent/allotee has prayed for dismissal of application for recalling of order dated 04.03.2021 passed by this Court.

4. As the record shows arguments of ld. counsel for complainant/present respondent were concluded on 12.01.2021. After taking few adjournments, the arguments of ld. counsel for respondent, present applicant were concluded on 18.02.2021. Since counsel for the complainant wanted to file written submissions and calculations pertaining to delay interest, opportunity was given to him for filing of written submissions and calculations which were filed on 25.02.2021. Counsel for the respondent, present applicant wanted to file counter-calculations which were filed on 04.03.2021. Admittedly three calculations were filed by counsel for the respondent, one with force majeure amounting to ₹ 3,97,680/- , second without force majeure amounting to ₹ 5,92,512/- and third as per Madhu Sareen's judgement (supra) amounting to ₹ 15,50,570/-. Copy of same was given to the counsel for complainant/allotee.

After looking into the counter-calculations, Sh. Salik Shafique Advocate had taken sometime during the Court proceedings to discuss with the complainant. After discussing the same with complainant, the counsel for complainant had agreed to take the amount of ₹ 15,50,570/- as compensation out of the counter-calculations given by the counsel for the respondent. There was no mis-communication or inadvertent mis-appreciation of events. Though it was going through video conferencing, yet it cannot be said that proceedings were somewhat different as narrated by counsel for applicant. There was no occasion for mis-appreciation or mis-communication. It was the option of Sh. Hemant Saini Advocate Id. counsel for respondent in the main case, either to remain present himself or to send his associate Sh. Himanshu Monga Advocate at the time of Court hearing. Sh. Himanshu Monga Advocate had never requested the Court that he wanted to consult his senior counsel Sh. Hemant Saini Advocate. It was their internal arrangement which has nothing to do with Court proceedings.

5. Ld. counsel for the applicant has not stated any provision under which the recall of any order can be made. At this stage it is necessary to point out Rule 8 (c) (x) of HRERA Rules, 2017 which reads as:-

The Authority shall , at all times, have the power , either on an application made by any interested or affected party or suo moto, to review, revoke, revise , modify, amend, alter, or otherwise change any order issued or action taken by the Secretary or any Officer of the Authority, if considered appropriate.

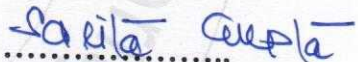
6. In the aforementioned Rule also, the word 'Authority' has been used which can pass order for either review , revoke, revise , amend, alter any order issued or action taken by the Secretary or by any officer of the Authority. The word Adjudicating Officer has not been used.


7. No ground is made out to recall order dated 04.03.2021 passed by this Court. The application has been filed with the sole purpose of delaying the execution of order dated 04.03.2021.

8. Resultantly, application dated 08.03.2021 for recall of order dated 04.03.2021 is ordered to be dismissed with cost of ₹ 10,000/- payable to Authority. Copy of this order be attached with the main complaint no. 636/2020 titled as Madhu Nigam vs BPTP Pvt Ltd. Order be uploaded on website of Authority and file be consigned to record room.

06.07.2021

Note: This order contains 7 pages. All the pages have been checked and signed by me.


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Dr. Sarita Gupta
[Adjudicating Officer]


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Dr. Sarita Gupta
[Adjudicating Officer]