



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 140 OF 2021

Anju Tyagi

...COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

CORAM:

Rajan Gupta

Chairman

Anil Kumar Panwar

Member

Dilbag Singh Sihag

Member

Date of Hearing: 19.08.2021

Hearing: 4th

Present: - Mr. Vivek Sethi, Ld. Counsel for the complainant through VC.
Mr. Shobit Phutela and Mr. Shubhnit Hans, Ld. Counsels for the
respondent through VC.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. On last date of hearing, matter was adjourned on request of complainant to address arguments on maintainability of the present application. Learned counsel for the complainant stated that complainant has filed the present application for review of order dated 31.10.2019 passed by the Authority in Complain No. 308 of 2018 titled Anuj Tyagi vs M/s TDI Infrastructure Ltd. Learned counsel for the complainant while addressing his arguments has made a limited prayer that while passing aforesaid order dated 31.10.2019, Authority has failed to adjudicate on the issue of possession and interest on delay in delivery of possession as per Rule 15 of HRERA, Rules 2017. He also informed the Authority that till date respondent promoter has neither delivered possession to the complainant nor obtained Occupation Certificate. Therefore, vide present review application, complainant is only seeking modification of the aforesaid order to the effect that respondent be directed to deliver possession of her unit and pay her interest on delay in delivery of possession as per Rule 15 of HRERA, Rules 2017.

2. Learned counsel for the respondent argued that present review application has been filed by the complainant after approximately one and half year of passing of the said order which is beyond limitation.



He further argued that present review application is not maintainable because as requisite under Regulation 23 of HRERA Regulations 2018, there is no discovery of any new and important matter or evidence, nor any mistake or error is apparent from the face of the record. In fact, if the complainant was aggrieved by order dated 31.10.2019, he should have filed an appeal before Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh. So, the said application is liable to be dismissed.

3. On perusal of the record, it is noticed that Authority had uploaded the aforesaid order on 19.11.2019 and this review application has been filed by the complainant on 02.02.2021 i.e. after approximately one year and three months after uploading of the said order which is beyond limitation. There is no application for condoning the delay along with the review application. Even, present review application has been filed through a counsel who did not argue before this Court while passing the order dated 31.10.2019. In fact, Mr. Vikas Deep, Advocate had filed the Complaint No. 308 of 2018 and he argued the matter before this Authority. Neither Vakalatnama of Mr. Vivek Sethi, is on record nor "No Objection Certificate" has been obtained from the original counsel. Complainant even did not bother to file an application for condoning the delay of about 381 days in filing this review application. In view of the law laid down by Hon'ble Supreme Court in **Tamil Nadu Electricity Board vs. N. Raju Reddiar and another, 1997 (9) SCC 736**, the review application



filed by the counsel other than the original counsel is not maintainable. In the case of Tamil Nadu Electricity Board, Hon'ble Supreme Court held as under:-

"...It is a sad spectacle that new practice unbecoming of worthy and conducive to the profession is cropping up. Mr. Mariaputham, Advocate-on-Record had filed vakalatnama for the petitioner-respondent when the special leave petition was filed. After the matter was disposed of, Mr. V. Balachandran, Advocate had filed a petition for review. That was also dismissed by this Court on April 24, 1996. Yet another advocate, Mr. S.U.K. Sagar, has now been engaged to file the present application styled as "application for clarification", on the specious plea that the order is not clear and unambiguous. When an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the advocate on record who neither appeared nor was party in the main case. It is salutary to not that court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the advocate on record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession.

In Review Petition No.2670/96 in CA No.1867/92, a Bench of three Judges to which one of us, K. Ramaswamy, J., was a member, has held as under: "The record of the appeal indicates that Shri Sudarsh Menon was heard and decided on merits. The Review Petition has been filed by Shri Prabir Chowdhury who was neither an arguing counsel when the appeal was heard nor was he present at the time of arguments. It is unknown on what basis he has written the grounds in the Review Petition as if it is a rehearing of an appeal against our order. He did not confine to the scope of review. It would be not in the interest of the profession to permit such practice. That part, he has not obtained " No Objection Certificate" from the Advocate-on- Record in the appeal, in spite of the fact that Registry had informed him of the requirement for doing so. Filing of the "No Objection Certificate" would be the basis for him to come on record. Otherwise, the Advocate-on-Record is answerable to the Court. The failure to obtain the "No Objection Certificate" from the erstwhile counsel has disentitled him to file the Review Petition. Even otherwise, the Review Petition has no merits, It is an attempt to reargue the matter on merits. On these grounds, we dismiss the Review Petition".

4. While relying on the aforesaid ruling of Hon'ble Supreme Court, a Single Bench of the Allahabad High Court in **Mohan Lal Bagla Son of Late**



Gopi vs Board Of Revenue And Ors, AIR 2005 All 308 has observed as under:-

"11. Otherwise also for a new counsel it may not be proper to move for the reasons as indicated below. In respect to question involved and to the argument which were advanced by learned counsel appearing for the party and in respect to queries which were made by the Court whether were satisfactorily replied or not, it cannot be possibly in the knowledge of another counsel who was not appearing at the time of first hearing of case. Take a case that a question was put to a counsel but he was not in a position to answer it, a particular document in support of claim was asked to be placed but learned advocate is not in a position to show and refer to the relevant document, and on a particular aspect, he might have virtually surrendered for the reason that he probably had no valid reply and thereafter, judgment comes, dealing with all the aspects. Now review petition is filed on the ground that something was not considered which was argued or there is wrong observation about certain facts or on alike ground then it has to be said that a new counsel is debarred from raising all these objections or objection of a like nature. The review petition appears to have been filed by new counsel mainly on the ground that some letters written by Mohan Lal Bagla to the Deputy Collector, Sales Tax and to the Commissioner have not been taken note and bid sheet has not been considered by this Court in respect to which suffice it to say that it cannot be said by Sri Singh, who is new counsel for the purpose of arguing review petition that whether the aforesaid letters were referred in the argument and they were relied by the then counsel and whether any effort was made by learned advocate to lay emphasis on those documents as they have any relevance in the matter in issue and thus the question touching with the proceedings of the Court and discussion during course of argument by a new counsel who was neither arguing counsel nor assisting counsel at the initial stage, cannot be permitted. To argue same details as a question of fact in second inning of the matter cannot be permitted. It is under very exceptional circumstance where it can be demonstrated that on the finding and reasoning so given, there is error apparent on the face of record which can be termed to be a mistake within the meaning of error apparent as that can be discovered without any argument, it may be filed by a new advocate but that too after obtaining no objection from earlier counsel. If a case is to be argued on the same set of facts by change of counsel, at several occasion, it may be possible that with imminence of the counsel, a new dimension to the argument may come on same set of facts. Skill in the argument and advocacy is to vary always from counsel to counsel. Although earlier two senior advocates of this Court namely Sri R.N. Singh and Sri V.B. Upadhyaya argued the matters on behalf of applicant at length with full vehemence at their command but now Sri V.B. Singh, learned senior advocate wants to argue the matter in his own way by placing the same record and same pleadings."



5. Hon'ble Punjab and Haryana High Court while applying the aforesaid rulings passed by Hon'ble Apex Court in **RA-CW 529 of 2017 (O&M) in CWP No.15820 of 2014 titled Ombir vs State Of Haryana & Ors on 9 August, 2018** held as under:

".....On the facts of present case, this Court is of the view that filing of review petition on the ground so taken in the application cannot be said to be just and proper so as to entitle Sri Saran, learned advocate and Sri Singh, learned senior advocate to file and argue this review petition."

3. In the present case, by filing a review application through a new counsel, the petitioner is trying to re-open the whole case and that too in the absence of the original counsel who was heard by this Court and to whom queries were put by this Court while passing the judgment dated 9.8.2016.

4. It is also to be noticed that the Office has raised objection that review application is filed beyond limitation and there is no application for condoning the delay in filing the review application. The objection of the Office is sustained. The LPA Bench has passed the order on 5.5.2017 and after a lapse of more than a year, the petitioner has filed the present review application and that too through a counsel who did not argue before this Court while passing the judgment dated 9.8.2016. The petitioner even did not bother to file an application for condoning the delay of about 446 days in filing this review application, inspite of the objection raised by the Office.

5. The result of the written test was declared on May 29, 2013 against the advertisement dated November, 23, 2012 inviting applications from eligible candidates for selection of Clerks in the subordinate courts. In the judgment dated 9.8.2016, this Court has already noticed that candidates under the reserved category of Physically Handicapped Persons have been selected and appointed as Clerks and posted in various Sessions Divisions three years ago. Now after about 5 years of selection and postings, the petitioner is trying to re-open the entire case by filing this review petition and that too by a counsel who did not argue before this Court.

6. For the foregoing reasons, this review application is dismissed".

Thus, in light of aforesaid judgments passed by Hon'ble Supreme Court, the present review application filed by the complainant to re-open the entire case by filing this review petition and that too by a counsel who did not argue before this Court is not maintainable.

6. Moreover, review application filed by the complainant does not fulfil the requirement of Regulation 23 of Haryana Real Estate Regulatory Authority, Panchkula (General) Regulations, 2018 because neither there is any discovery of new and important matter or evidence, nor any mistake or error is apparent from the face of the record. For ready reference, said Regulation 23 is reproduced as follows:

“23. (a) Any person aggrieved by a direction, decision or order of the Authority, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Authority.”

7. In present case, if the complainant was aggrieved by order dated 31.10.2019 passed by the Authority, appropriate remedy available to her was to prefer an appeal before the Appellate Tribunal under section 43 of THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016.

Even, as per proviso of Section 39 of the RERA Act, 2016, Authority cannot amend substantive part of its order by reviewing its order

under said review application. Modification of the order as sought by the complainant to direct respondent to deliver him possession along with interest on delay in delivery of possession would tantamount to amend substantive part of its order passed under the provisions of this Act. Therefore, complainant may approach appropriate forum under section 43 of the RERA Ac, 2016. Relevant sections 43 and 39 of THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 are reproduced below:

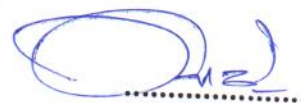
“Section 43(5). Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter”

“ Section 39. The Authority may, at any time within a period of two years from the date of the order made under this Act, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties: Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act: Provided further that the Authority shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.”

8. For the foregoing reasons, present review application is dismissed.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]