

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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**Appeal No.319 of 2021  
Date of Decision: 17.09.2021**

Smt. Kanta Malhotra wife of late Shri Badri Nath Malhotra, age about 70 years, right now permanent resident of House No.58 Old Housing Board Colony, Rohtak, Haryana-124001.

MOB: 8053999932, Email ID: sushil1082@rediffmail.com

Appellant

Versus

1. M/s Parsvnath Developers Limited, through its Chairman Registered office address Parsvnath Developers Limited, Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi-110032. Email: [md@parsvnath.com](mailto:md@parsvnath.com). Mob: 9810019122
2. Mr. Pradeep Jain, Member Board of Directors/Promoter of the Company, Parsvnath Developers Limited, Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi-110032. Email: [md@parsvnath.com](mailto:md@parsvnath.com). Mob: 9810019122
3. Mr. Sanjeev Jain, Member Board of Directors/Promoter of the Company, Parsvnath Developers Limited, Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi-110032. Email: [md@parsvnath.com](mailto:md@parsvnath.com). Mob: 9810019122.
4. Mr. Rajeev Jain, Member Board of Directors/Promoter of the Company, Parsvnath Developers Limited, Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi-110032. Email: [md@parsvnath.com](mailto:md@parsvnath.com). Mob: 9810019122.

Respondents

**CORAM:**

Justice Darshan Singh (Retd),  
Shri Inderjeet Mehta,  
Shri Anil Kumar Gupta,

Chairman  
Member (Judicial)  
Member (Technical)

**Argued by:** Shri Sushil Kumar Malhotra, Advocate, Learned Counsel for the appellant.

[The aforesaid presence is being recorded through video conferencing]

**Appeal No.319 of 2021****ORDER:****JUSTICE DARSHAN SINGH (RETD.) CHAIRMAN:**

The present appeal has been preferred under Section 44(2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') against the order dated 18.02.2021 passed by the learned Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called the 'Authority'), which patently shows the lust for more money by the appellant which was not even legally recoverable.

2. The background giving rise to the filing of the present appeal can be summed up as under: -

The appellant filed complaint no.77/2018 for refund of the amount against the respondents on 15.02.2018. The said complaint was decided by the learned Authority vide order dated 04.10.2018. Initially, the refund of Rs.47,80,499/- along with interest in accordance with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter called 'the Rules') was allowed. It is admitted fact that later on the learned Authority modified the amount of refund to Rs.30,83,024/- (in the grounds of appeal it is wrongly mentioned as Rs.30,83,049/-) along with prescribed rate of interest as per Rule 15 of the Rules.

3. To execute the aforesaid order dated 04.10.2018, the appellant filed the execution complaint No.1233/2018. During the

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pendency of the said execution complaint, the learned Authority passed the order dated 15.02.2019 which reads as under: -

**“ORDER:**

*Respondent seeks further time to pay the amount of Rs.30,83,024/-, which he was supposed to pay today. In order to desist any further dilatory tactics on the part of respondent, he is directed to pay the said amount by 20.02.2019 failing which he will be liable to penal interest @ 14% p.a. on the undisputed amount. The issue concerning payment of balance amount, if any will be adjudicated on the next date of hearing on which review application regarding the disputed amount has been listed.*

*Case is adjourned to 9.04.2019.”*

4. Again, on 09.04.2019, the following order was passed in the aforesaid execution complaint no.1233/2018: -

**“Order:**

*The present petition has been filed before the Authority for execution of refund order passed for an amount of Rs.47,80,499/-. The respondent had opposed the execution petition on the ground that the actual amount payable to the complainant by way of refund is Rs.30,83,024/- and balance amount of Rs.16,97,475/- was never paid by him. On the last date of hearing, the respondent was directed to pay the undisputed amount of Rs.30,83,024/- by 20.02.2019 failing which he was made liable to pay penal interest @ 14% p.a. on the undisputed amount.*

2. Today, respondent's counsel seeks a week time more to pay the undisputed amount of Rs.30,83,024/-

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*along with interest. The complainant also seeks time to furnish relevant documents for providing payment of disputed amount.*

3. *After hearing both the parties, the Authority observes that the respondent failed to comply with the previous order's directions passed by the authority which specifically states that if respondent fails to pay the undisputed amount of Rs.30,83,024/- by 20.02.2019 he will be liable to pay penal interest @ 14% p.a. on the said amount. Therefore, the Authority now directs the respondent to pay the undisputed principal amount of Rs.30,83,024/- along with interest @ 14% within a week. Further Authority directs the complainant to prove that he has paid an amount of Rs.9,60,025/- to the authorized person of the respondent.*

*With above directions, case adjourned to 08.05.2019.”*

5. It is evident from the aforesaid orders that the learned Authority has held the respondent liable to pay the penal interest @ 14% per annum on the undisputed amount due to delay in payment of the amount by the respondent/Judgment Debtor.

6. Realising its mistake, the learned Authority passed the impugned order dated 18.02.2021. The operative part of the said order reads as under: -

*“3. After hearing the contentions of the parties and going through the document on record, it is revealed that the present complaint has been filed for execution of refund order dated 04.10.2018 passed in favour of complainant. The respondent was directed to refund the amount of*

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₹30,83,024/- along with interest as per Rule 15 of HRERA Rules. The Authority during the execution of said order, observing the conduct of the respondent had awarded penal interest at the rate 14% payable to the complainant. However, Authority observes that the order under execution has to be executed per se and can't be modified during execution proceedings. Therefore, reviewing its earlier orders dated 15.02.2019, 09.04.2019 whereby penal interest @ 14% has been granted, Authority observes that the complainant will be entitled to interest on the amount deposited by her as per Rule 15 of HRERA Rules. Authority has got calculated the interest payable to the complainant from its Accounts branch from the date of payments made by the complainant till 04.10.2018 and the said interest works out to ₹23,86,200/-. Respondent was therefore liable to refund an amount of ₹54,69,224/- (₹30,83,024/- + ₹23,86,200/-) to the complainant. Out of said amount, a sum of ₹30,20,224/- including today's payment has already been paid to the complainant. Respondent is therefore directed to pay remaining balance of ₹24,49,000/- to the complainant before next date of hearing. Further, additional interest from 04.10.2018 till entire payment is made to the complainant shall be paid by the respondent to the complainant.

3. Case is adjourned to 08.04.2021.”

7. Aggrieved with the aforesaid order dated 18.02.2021, the present appeal has been preferred.

8. We have heard Shri Sushil Kumar Malhotra, Advocate, learned counsel for the appellant and have perused the case file.

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9. Learned counsel for the appellant has contended that on the filing of execution complaint by the appellant/Decree Holder, the learned Authority had issued the notice dated 24.12.2018 (Annexure A-6) to the respondents and in the said notice, it was categorically mentioned that in case of failure of the respondents to comply with the directions issued by the learned Authority in its order dated 04.10.2018, the further action under Section 63 of the Act shall be initiated.

10. Learned counsel for the appellant has drawn our attention to the order dated 13.02.2019 (Annexure A-8), wherein the direction for payment of Rs.30,83,024/- has been made by the next date of hearing i.e. 15.02.2019. He contended that the learned Authority has categorically mentioned in the show cause notice that in case the respondents failed to comply with the directions issued in the order dated 04.10.2018, the penalty proceedings under Section 63 of the Act shall be initiated. He contended that by exercising its powers under Section 63 of the Act, the learned Authority has awarded the penal interest @ 14% per annum vide order dated 15.02.2019 and 09.04.2019 in the shape of penalty under Section 63 of the Act. So, there was nothing wrong in awarding the penal interest to the appellant due to the repeated failure of the respondents to pay the outstanding amount.

11. He contended that the learned Authority vide impugned order dated 18.02.2021 (Annexure A-1) has reviewed its earlier orders dated 15.02.2019 and 09.04.2019 even though the learned

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Authority has no powers to review its orders under the provisions of the Act. The only remedy with the respondents was to file the appeal. Thus, he contended that the impugned order is illegal and is liable to be set aside.

12. We have duly considered the aforesaid contentions. As already mentioned, the learned Authority vide order dated 04.10.2018 (Annexure A-4) has awarded the relief of refund to the appellant with interest in accordance with Rule 15 of the Rules i.e. @ SBI highest marginal cost of lending rate plus 2%. The execution complaint no.1233/2018 was filed by the appellant to execute the order dated 04.10.2018.

13. It is settled proposition of law that the Executing Court cannot go beyond the decree. The Executing Court has to execute the decree as it is. In case **Shivshankar Gurjar Vs. Dilip, 2014(6) R.C.R. (Civil) 678** the Hon'ble Apex Court had laid down that the Executing Court cannot go beyond the decree. It has no jurisdiction to modify a decree. It must execute the decree as it is.

14. Again, in case **Lekh Raj (Dead) Through L.Rs. & Ors. vs. Ranjit Singh & Ors. 2018(1) R.C.R. (Civil) 687**, the Hon'ble Apex Court held that the Executing Court cannot go behind the decree.

15. In case, **Sneh Lata Goel vs. Pushplata & Ors., 2019(1) R.C.R. (Civil) 808**, again the legal position was reiterated that the Executing Court cannot go behind the decree and must execute the

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decree as it stands. Again, in case **S. Bhaskaran vs. Sebastian (Dead) by Lrs. & Ors. 2019(4) R.C.R. (Civil) 406**, the Hon'ble Apex Court has categorically laid down that the Executing Court cannot travel beyond order or decree under execution. ‘

16. In view of the consistent ratio of law laid down by the Hon'ble Apex Court, the learned Authority was required to execute the order dated 04.10.2018 passed in complaint no.77/2018 as it is. The learned Authority had no jurisdiction to modify the terms of the order dated 04.10.2018. Thus, the orders dated 15.02.2019 (Annexure A-2) and 09.04.2019 (Annexure A-3) were patently illegal and non-est in the eyes of law. Fortunately, the learned Authority became aware of the mistake committed by it in the aforesaid orders dated 15.02.2019 and 09.04.2019 and corrected the said mistake by passing the impugned order dated 18.02.2021. The corrections so made by the learned Authority vide impugned order will fall within the purview of Section 39 of the Act, as mentioning the penal rate of interest @ 14% per annum was contradictory to the order dated 04.10.2018 being executed by the appellant. So, it was a mistake apparent on the record and could have been rectified by the learned Authority while exercising its powers under Section 39 of the Act in order to do the substantial justice. Thus, we do not find any illegality in this action of the learned Authority.

17. Learned counsel for the appellant has contended that the penal interest was awarded by the learned Authority by exercising the powers under Section 63 of the Act. This plea raised by learned



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counsel for the appellant is totally devoid of merits. Though, in the show cause notice dated 24.12.2018 (Annexure A-6), the learned Authority had mentioned that in order to ascertain the necessity of any action under Section 63 of the Act, the Authority had decided to call the respondents to file reply by 15.01.2019 failing which the further action under Section 63 of the Act will be initiated against the respondents. Section 63 is a penal section. After issuance of the show cause notice, the learned Authority was required to initiate the proceedings as per the procedure prescribed under Rule 28 of the Rules but no such procedure has been followed while passing the orders dated 15.02.2019 and 09.04.2019. Sections 63 and 76 of the Act read as under: -

***“63. Penalty for failure to comply with orders of Authority by promoter.***

*If any promoter, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of the real estate project as determined by the Authority.”*

***“76. Crediting sums realised by way of penalties to Consolidated Fund of India or State account.***

*(1) All sums realised, by way of penalties, imposed by the Appellate Tribunal or the Authority, in the Union territories, shall be credited to the Consolidated Fund of India.*

*(2) All sums realised, by way of penalties, imposed by the Appellate Tribunal or the Authority, in a State, shall be*

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*credited to such account as the State Government may specify.”*

18. Section 63 of the Act provides that if the promoter fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent, of the estimated cost of the real estate project as determined by the Authority. So, as per this section, the Authority is competent to impose penalty for failure of the promoter to comply with the orders of the Authority. Section 76(2) of the Act provides that all the sums realised by way of penalties, imposed by the Appellate Tribunal or the Authority, in a State, shall be credited to such account as the State Government may specify. It shows that the amount of penalty imposed under Section 63 of the Act by the Appellate Tribunal or the Authority in a State, has to be credited to such account as specified by State Government and it cannot be awarded to the parties to the litigation. Thus, the penal interest awarded by the learned Authority cannot be considered to be a penalty as provided under Section 63 of the Act for the reasons that the said penal interest was to be paid to the appellant and not to be credited to the account specified by the State Government. So, the appellant cannot take the benefit of Section 63 of the Act.

19. The present appeal is patently an effort by the appellant to recover more amount for which she was not entitled even as per the order dated 04.10.2018 passed in her favour by the learned

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Authority. It shows the lust for money by the appellant. The appellant wants to take the benefit of legal blunder committed by the learned Authority in modifying the rate of interest which was against the settled principle of law and the said mistake has been rightly corrected by the learned Authority vide impugned order dated 18.02.2021.

20. Consequently, the present appeal is hereby dismissed with Rs.10,000/- as costs. The amount of costs be deposited with the District Legal Services Authority, Panchkula within three weeks from the date of this order, failing which the amount of costs of Rs.10,000/- imposed upon the appellant shall be recovered by the learned Authority from the amount payable to the appellant by the respondents and the same shall be deposited with the District Legal Services Authority, Panchkula.

21. Copy of this order be communicated to the parties and the learned Authority for compliance.

22. File be consigned to record.

Announced:  
September 17, 2021

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

Inderjeet Mehta  
Member (Judicial)

Anil Kumar Gupta  
Member (Technical)

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Smt. Kanta Malhotra Vs. M/s Parsvnath Developers Limited  
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Present: Shri Sushil Kumar Malhotra, Advocate, Learned Counsel for the appellant.

[The aforesaid presence is being recorded through video conferencing]

Arguments heard.

Vide our separate detailed order of the even date, the appeal is dismissed with Rs.10,000/- as costs. The amount of costs be deposited with the District Legal Services Authority, Panchkula within three weeks from the date of order, failing which the amount of costs of Rs.10,000/- imposed upon the appellant shall be recovered by the learned Authority from the amount payable to the appellant by the respondents and the same shall be deposited with the District Legal Services Authority, Panchkula.

Copy of the detailed order be communicated to the parties and the learned Authority for compliance.

File be consigned to record.

Announced:  
September 17, 2021

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

Inderjeet Mehta  
Member (Judicial)

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