

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.594 of 2021
Date of Decision: 14.03.2022**

Satya Prakash s/o Shri Raja Ram, 39/6, Hans Park, near Gurgaon Gramin Bank, Opposite A Block, Palam Vihar, Gurugram-122017.

Appellant

Versus

MAPSKO Builder Private Limited, Registered Office at 52, North Avenue Road, Punjabi Bagh (West), New Delhi-110026.

Respondent

CORAM:

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

Chairman
Member (Judicial)
Member (Technical)

Present: Shri Rishabh Jain, Advocate, learned counsel for appellant.

Shri Sumesh Malhotra, Advocate, learned counsel for respondent.

[Hearing conducted through V.C.]

ORDER:

JUSTICE DARSHAN SINGH (RETD.) CHAIRMAN:

The present appeal has been preferred against the order dated 03.08.2021 passed by learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called the

'Authority') in Execution Complaint No. E/531/2020/884/2018.

2. Learned counsel for the respondent-promoter has placed on file the copy of the paper book of RERA Appeal No.64 of 2020 filed before the Hon'ble High Court against the order dated 21.01.2020 passed by this Tribunal.

3. The only grievance of the appellant in the present appeal is that the execution petition filed by the appellant-allottee has been adjourned sine die by the learned Authority simply on the ground that the respondent-promoter has filed appeal against the order passed by this Tribunal.

4. Learned counsel for the appellant has contended that in the absence of any stay order by the Hon'ble High Court in the appeal, the execution proceedings cannot be adjourned sine die.

5. On the other hand, Shri Sumesh Malhotra, learned counsel for respondent has contended that the appeal filed by the respondent is pending before the Hon'ble High Court. The Hon'ble High Court is seized of the matter. If the impugned order is set aside and the execution petition is allowed to continue, the appeal preferred by the appellant shall become infructuous. He further contended that the respondent is

going to move an application for early hearing before the Hon'ble High Court. Earlier, the appeal could not be taken up due to COVID-19 as the proceedings were being conducted by the Hon'ble High Court virtually.

6. We have duly considered the aforesaid contentions.

7. As per the admitted facts, the appellant-allottee has filed the execution complaint bearing No. E/531/2020/884/2018. The said execution proceedings have been adjourned sine die by the learned Authority vide impugned order dated 03.08.2021 on the ground that the respondent-promoter has preferred an appeal before the Hon'ble High Court against the order passed by this Tribunal.

8. We have perused the copy of the paper book produced by learned counsel for the respondent which shows that in RERA Appeal No.64 of 2020, the respondent-promoter has challenged the order dated 21.01.2020 passed by this Tribunal and the order dated 14.02.2019 passed by the learned Authority. We have also perused the copy of the orders passed by the Hon'ble High Court in RERA Appeal No.64 of 2020. It is an admitted fact that though the appellant had filed an application under Order 41 Rule 5 of the Code of Civil Procedure, for staying the operation of the

impugned order passed by this Tribunal as well as the Authority, but, so far no stay order has been passed by the Hon'ble High Court.

9. Order 41 Rule 5 sub-rule (i) of the Code of Civil Procedure reads as under:-

“(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.”

10. The aforesaid provision of law clearly provides that an appeal shall not operate as stay of the proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree. Thus, mere filing of the appeal by the respondent-promoter will not be a ground to stay the execution proceedings initiated by the appellant-allottee.

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11. Consequently, the impugned order dated 03.08.2021 passed by the learned Authority is unsustainable in the eyes of law.

12. Resultantly, the present appeal is hereby allowed, the impugned order dated 03.08.2021 passed by the learned Authority is set aside.

13. Copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority for compliance.

14. File be consigned to the record.

Announced:
March 14, 2022

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)