# BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

**Appeal No. 47 of 2022**
**Date of Decision: 22.04.2022**

Municipal Corporation Faridabad through its Commissioner B.K. Chowk, Narela Rajeev Nagar, Nehru Ground, New Industrial Town, Faridabad.

Appellant

Versus

Rise Projects Private Limited through its authorized signatory, 195, Basement, Ram Vihar, Dehi-110092.

Respondent

**CORAM:**

Justice Darshan Singh (Retd), Chairman
Shri Inderjeet Mehta, Member (Judicial)
Shri Anil Kumar Gupta, Member (Technical)

**Argued by:** Shri Lokesh Sinhal, Advocate, learned counsel for the appellant.

Shri Akshay Bhan, learned Senior Advocate with Shri Venket Rao, Advocate, Shri Amandeep Singh Talwar, Advocate and Ms. Ankita Saikia, Advocate, learned counsel for respondent.



**O R D E R:**

**JUSTICE DARSHAN SINGH (RETD.) CHAIRMAN:**

The present appeal has been preferred under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') against the order dated 10.11.2021 passed by learned Haryana Real Estate Regulatory

Authority, Panchkula (hereinafter called 'the Authority'), whereby the learned Authority had held the undertaking dated 16.04.2013 given by the respondent to be not given voluntarily and was considered to be onerous, one-sided and dictated by a dominant party. It was further observed that rights and liabilities of both the parties deserved to be determined in accordance with general law of land and express provisions of the Act. The learned Authority had decided to pass a fresh speaking order for adjudicating the rights and liability of both the parties after considering the documents placed on record.

2. The respondent-allottee had filed the complaint with the learned Authority alleging therein that it was allotted a Group Housing plot bearing No.2 (GH-02) admeasuring 2.64 acres, Sector 41, Faridabad, vide allotment letter 12.04.2013 (Enclosure 'B'). It was pleaded that as per the terms and conditions of allotment, the appellant- Municipal Corporation Faridabad (for short 'the Corporation') had undertaken to complete all the development works, the cost of which was included in the price of the auctioned plots. It was further mentioned that in case the allottee wanted to take possession of the group housing plot without completion of the development works by the appellant-Corporation, the same was to be allowed subject to undertaking from the allottee stating that they will not claim any services from the

Corporation and make arrangements at their own level till such time the required services are provided at the site by the Corporation.

3. It was further pleaded that in view of the assurances given by the appellant-Corporation that the development works and amenities/facilities would be provided by it within one year, the respondent-complainant decided to take possession of the plot which was accordingly given on 10.05.2013. It was also pleaded that the condition of obtaining undertaking from the allottee was the result of unequal bargaining power and was unconscionable and even void on account of it being without jurisdiction, the same in no manner suggests that the required services will not be provided by the Municipal Corporation. It was further pleaded that the appellant-Corporation failed to carry out the development works and provide the amenities of public facilities even after the lapse of number of years, though repeated requests were made by the respondent-allottee. The matter had even gone to the higher authorities and certain directions were issued by them. Ultimately, the respondent-allottee had filed the complaint before the learned Authority seeking the following relief:-

> *"i) To direct the Respondent-Corporation to get the Group Housing Scheme, Sector 41,*

*Faridabad registered under the Provisions of the Real Estate (Regulation and Development) Act, 2016; and*

ii) *To direct the Respondent-Corporation to fulfill its obligations as required to be carried out, in a time bound manner; and/or*

iii) *Any other order that this Ld. Authority may deem fit."*

4. After hearing learned counsel for the parties, the learned Authority passed the impugned order dated 10.11.2021 whereby the order dated 16.03.2021 was practically reviewed with respect to the validity of the undertaking dated 16.04.2013 and the rights of the respondent-allottee to claim interest for delay in completion of infrastructure works of the colony. The learned Authority further observed that it will be just and fair that a fresh speaking order for adjudicating the respective rights and liabilities of both the parties should be passed after duly considering the documents placed on record.

5. We have heard learned counsel for the parties at length. They have also filed the written arguments. We have meticulously examined the record of the case.

6. Shri Lokesh Sinhal, learned counsel for the appellant has contended that the Act nowhere empowers the

Authority to review any order. The action of the Authority is in contravention of Section 39 of the Act. The Authority is empowered only to rectify the mistake apparent from record and is not empowered to rectify the substantive part of its order. The learned Authority has overlooked and gone beyond the statute since there is no provision of review or reconsideration in the Act. The remedy to review is a statutory remedy. Once there is no provision in the statute for review, no application for review is maintainable. To support his contentions, he relied upon cases ***KALABHARATI ADVERTISING Versus HEMANT VIMALNATH NARICHANIA, (2010)9 Supreme Court Cases 437*** and ***NARESH KUMAR AND OTHERS Versus GOVERNMENT (NCT OF DELHI) (2019)9 Supreme Court Cases 416***.

7. He further contended that in the order dated 14.07.2021, the learned Authority has categorically mentioned that acceptance of the submission of learned counsel for the respondent to reconsider the observation recorded in para no.3(iii) of its order dated 16.03.2021 will tantamount to review.

8. He further contended that in spite of the aforesaid observation, the learned Authority still acting in patently illegal manner has changed the substantive part of the order

by reviewing the order dated 16.03.2021, which is totally beyond the purview of Section 39 of the Act.

9. He further contended that after hearing the parties at great length on 16.03.2021, the orders were reserved which were even uploaded on the website of the learned Authority. It shows the arguments in the matter were heard completely on 16.03.2021 and consciously a finding was recorded that in view of undertaking dated 16.04.2013, the respondent-complainant shall be deemed to have waived off its right to seek any compensation for delayed completion of infrastructural works.

10. He further contended that if the respondent-complainant was aggrieved by the order dated 16.03.2021, then they ought to have filed appeal against the said order before this Tribunal.

11. With these pleas, it was contended that the impugned order is without jurisdiction and is liable to be set aside.

12. To the contrary, Shri Akshay Bhan, learned Senior Advocate, counsel for the respondent has contended that the appeal filed by the appellant is wholly based on the application of Section 39 of the Act, but the powers exercised by the learned Authority to pass the impugned order are perfectly

within the four corners of Section 38 of the Act and the regulations framed by the learned Authority governing the proceedings. He contended that Section 38(2) of the Act provides that the Authority shall be guided by the principles of natural justice and, subject to the provisions of the Act and rules made there under, the Authority shall have the powers to regulate its own procedure. He contended that by exercising its powers under Section 85 of the Act, the Authority has framed the Haryana Real Estate Regulatory Authority, Panchkula (General) Regulations, 2018 (hereinafter referred as the 'Regulations"). As per Regulation 23(a) and 28, the learned Authority is empowered to amend or rectify any defect or error in the proceedings before it to determine the real question or issue arising in the proceedings.

13. He further contended that the learned Authority is empowered to pass the ad-interim orders under Regulation 20 and 25 of the Regulations. He further contended that Regulation 23 gives special powers to the learned Authority to rectify such mistake or error apparent on the face of the record or for any sufficient reasons, wherein the evidence had not been taken into consideration before passing of order. These regulations further contemplate the powers of the Authority to rectify any order for determining the real question or issues arising out of the proceedings. He contended that the

observation of the learned Authority in the order dated 16.03.2021 is only with respect to the undertaking dated 16.04.2013 and not for the other documents brought on record which were integral part of the record and needs to be considered for the proper adjudication of the matter. He further contended that in fact the order dated 16.03.2021 was passed after hearing the part arguments. The learned Authority has given liberty to the parties to lead their further evidence in order to enable it to adjudicate the matter.

14. He further contended that on disclosing the additional facts in the application filed by the respondent, a Local Commissioner was appointed who submitted his report to the Authority which clearly established that the undertaking dated 16.04.2013 was inconsequential and not affecting the rights of the respondent-complainant. The obligation of the appellant-Corporation to complete the development in a time bound manner stands established. He contended that for the reasons mentioned in the impugned order, the learned Authority had observed and ordered that various applications were filed along with the documents in the matter, which were not considered for proper adjudication of the matter. Therefore, the learned Authority considered it just and fair that a fresh speaking order for adjudicating respective rights and liabilities of the parties should be passed.

15. Learned counsel for the respondent further contended that it is settled principle of law that the interim orders passed by the Authority/Court are subject to the final order and it is the final order which will adjudicate finally the rights and liabilities of the parties. The order dated 16.03.2021 was only an interim order which was passed without any definite direction and was subject to further arguments on the matter. He further contended that if the contentions of the appellant are accepted, then the order dated 16.03.2021 will also tantamount to review of the previous orders passed by the learned Authority.

16. He further contended that interim orders passed during pendency of the suit or the proceedings do not substantially decide the rights of the parties. The interim orders do not conclusively decide the rights and obligations of the parties and are subject to change in the light of the final orders. The interim orders enable the protection of subject matter of the suit and aid in the due assistance of parties. Whereas, the final orders as per Section 2(14) of the Code of Civil Procedure, 1908 means the formal expression of any decision of a Civil Court which is not a decree. He contended that only the final orders determine the rights of the parties. To support his contention, reliance was placed upon the following judicial precedents:-

(***1) STATE OF MADHYA PRADESH AND ORS. VS. M/S M/S M.V. VYAVSAYA AND COMPANY (C.A. No.-014921-014926/1996)***

***(2) PREM CHANDRA AGARWAL & ANR VS. U.P. FINANCIAL CORPN. & ORS 2009(6) SCR 931***

***(3) ACHAL MISRA VS. RAMA SHANKER SINGH AND OTHERS (2005)5 SCC 531***

17. He further contended that additional documents are yet to be properly considered for adjudication of the matter by the learned Authority. So, the learned Authority in the impugned order has directed the respondent-complainant to submit a final summary of their submissions supported by documents in supersession of all previous applications so that a fresh speaking order for adjudicating the rights and liabilities of both the parties should be passed duly considering the documents placed on record. In the impugned order, no rights and liabilities of the parties were decided. So, there is no question of filing the appeal.

18. He further contended that the appellant-Corporation has used its dominant position in obtaining the undertaking dated 16.04.2013. The said undertaking was given by the respondent under bonafide belief that the appellant-Corporation would complete the work within a

period of one year. The undertaking given by the developers was only a stop gap arrangement till the time MCF completed the development works. Thus, the said undertaking nowhere condones the subsequent delay in fulfillment of the obligations by the appellant. The said undertaking has lost its force when the appellant-Corporation has admitted the delay on its part in the order dated 31.10.2014 passed by the appellant. He further contended that the statutory rights are clearly conferred on the allottees. It cannot be waived off merely by signing an undertaking and therefore there cannot be an estoppel against the statute. To support his contention, he relied upon case ***STATE OF UTTAR PRADESH AND ANOTHER Versus UTTAR PRADESH RAJYA KHANIJ VIKAS NIGAM SANGHARSH SAMITI AND OTHERS***, ***(2008) 12 Supreme Court Cases 675***.

19. He further contended that the learned Authority has rightly held in the impugned order that the undertaking dated 16.04.2013 cannot override the rights of the allottee and the appellant was liable to complete the infrastructure facilities within a reasonable time frame as per the provisions of Section 11(3)(b), 11(4), 18 and 34(f) of the Act.

20. He further contended that there is a continuing default on the part of the appellant to complete the development works, which is evident from the report of the

Local Commissioner filed before the learned Authority in Suo Moto Complaint No.1160 of 2021 titled as "HRERA Panchkula vs. Rise Projects Pvt. Ltd."

21. He further contended that the appellant-Corporation is a promoter as per Section 2(zk) of the Act and therefore is liable to compensate the allottees for the delay caused.

22. With these pleas, learned counsel for the respondent-complainant contended that there is no illegality in the impugned order.

23. We have duly considered the aforesaid contentions.

24. The main grievance of the appellant as it appears to this Tribunal from the pleadings and submissions of learned counsel for the parties is the observation of the learned Authority in the impugned order dated 10.11.2021 effecting the validity and legality of the undertaking dated 16.04.2013 and to re-open the issue with respect to the liability of the appellant to pay the compensation for delay in completion infrastructure facilities.

25. Before proceeding further, some previous orders have to be referred to appreciate the matter in question in better way. Vide order dated 10.12.2020, the learned Authority held that the appellant-Corporation is a promoter in terms of Section 2(zk) of the Act and as such is liable to

discharge its obligations as a promoter of the project. Then, there is order dated 19.01.2021. The relevant part of the said order reads as under:-

> *"5. In view of aforesaid analysis of information provided by respective parties, it is observed and ordered as follows:-*
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> *(i) The orders dated 10.12.2020 passed by this Authority are re-iterated that the respondent Municipal Corporation, Faridabad will be treated as a promoter-developer covered within definition of Sub Section 2(zk) of the RERA Act, 2016. Therefore, MCF Faridabad is answerable and liable as a promoter in terms of the provisions of the Act.*
>
> *In the instant case, a colony of six large group housing plots, was floated by the Corporation in 2013. Admittedly, however MCF completed development works of the colony in 2019. These works were supposed to have been completed in 2014, thus corporation completed the works with a delay of nearly 5 years.* ***Tentative view*** *of the Authority is that for the delay caused the Corporation has earned a liability to compensate the allottees in terms of the provisions of the Act as interpreted by this Authority in complaint No.113 of 2018 Madhu Sareen Versus BPTP.* ***These views of the Authority shall be confirmed on the next date after further hearing of both the***

***parties***. *The interest which may have become due to be paid to the allottees on account delay caused in completing the development works should be calculated by both the parties which will be adjudicated upon by this Authority on the next date.*

*(ii) Apparently, complainants are still disputing the completion of development. Whether the development works have been executed as per approved plans needs to be verified on the ground. Both the parties shall submit their respective statements in this regard. If an appropriate conclusion is not arrived at on the next date, the Authority will appoint its own Local Commissioner to examine the site and submit its report.*

*(iii) From the pleadings of both the parties it is further made out that the case of the respondent corporation is that the complainant has been defaulting in making payment of due instalments, therefore, the development works could not be carried out. The case of the complainant-allottee on other hand is that having already paid 45% of the consideration amount in the year 2014 the corporation should have executed the development works. Since they were not developing the site at all, and their project was facing difficulties, therefore, they stopped payments. Further arguments in this regard will take place on the next date of hearing."*

26. Thereafter, the learned Authority passed the order dated 16.03.2021. In that order, the learned Authority by considering the undertaking dated 16.04.2013 given by the respondent-allottee, laid down as under:-

> *"For the reasons stated above* ***the prayer of Complainant Company that they should be awarded interest for the period of delay caused in construction of infrastructure from the year 2014 till date cannot be accepted. The complainant had voluntarily taken possession of the plot without development of infrastructure, and they have given undertaking that they will not insist for the same. For this reason, the complainant company shall be deemed to have waived off their right to seek compensation for delayed completion of infrastructure works.*** *Further, even though, admittedly, Municipal Corporation, Faridabad has much delayed in construction of infrastructure* ***but complainant company has also defaulted in making payment of due instalments. In the circumstances, it does not appear justified that the interest for the delayed period should be awarded to the complainant company****."*

27. Thereafter, the impugned order dated 10.11.2021 has been passed wherein the learned Authority has laid down as under:-

*"(ii) The said undertaking dated 16.04.2013 was signed barely 2-3 days after issuance of allotment letter by Municipal Corporation Faridabad. In the absence of contrary averments the argument put forth by complainant company that similar undertakings had been got signed from other five allottees of the project is being taken as correct.* ***If all six allottees of the project had given a similar undertaking it can be presumed that respondent corporation had made them sign such an undertaking. It cannot be imagined that Complainant Company (ies) would act against their own interest and agree that respondent corporation may not lay critical infrastructural facilities for indefinite period of time. It is presumed that firstly, such an undertaking could not be given voluntarily as it serves no purpose of allottees, and secondly, it could not give respondent corporation an unqualified right to lay or not to lay critical infrastructure of the colony for indeterminate period of time. Surely such an undertaking has to be considered onerous one-sided and dictated by a dominant party****.*

*(iii) If effect of the undertaking is discounted from the equation of relationship of allottees and Promoter Corporation,* ***rights and liabilities of both the parties then deserves to be determined in accordance with general law of the land and express provisions of law*** *which in the present case is the RERA Act, 2016.*

*(iv) The Authority observes that Complainant Company had submitted several applications dated 18.01.2021, 10.03.2021, 19.03.2021, 31.03.2021 and 07.09.2021 before the Authority. Several documents had also been submitted with each of the applications. The Authority agrees that the documents submitted along with applications have to be accounted for and disposed of appropriately.*

*7. In the light of aforesaid* ***observations and findings, Authority considers it just and fair that a fresh speaking order for adjudicating respective rights and liabilities of both the parties should be passed after duly considering the documents placed on record****."*

28. Thus, in the impugned order dated 10.11.2021, the learned Authority has reviewed the earlier order dated 16.03.2021 and observed as under:-

(i) that it cannot be imagined that the respondent company agreed that the appellant-Corporation may not lay critical infrastructural facilities for indefinite period of time;

(ii) that it cannot be presumed that such an undertaking could be given voluntarily as it serves no purpose of the allottee and certainly it cannot give to the appellant corporation an unqualified right to lay or not to lay any

critical infrastructure of the colony for indeterminate period of time;

(iii) that such an undertaking has to be considered onerous one-sided and dictated by the dominant party. It was further held that the rights and liabilities of both the parties are governed in accordance with general law of land and express provisions of Act.

29. The learned Authority has further observed that it considered it just and fair that a fresh speaking order for adjudicating the respective rights and liabilities of both the parties should be passed after considering the documents placed on record.

30. Aggrieved with the aforesaid findings of the learned Authority in the impugned order dated 10.11.2021 the present appeal has been preferred.

31. On analysis of the orders reproduced above, it comes out in the impugned order the learned Authority has referred its order dated 19.01.2021, wherein the learned Authority has taken the **tentative view** that the appellant-Corporation has earned a liability to compensate the allottees in terms of the provisions of the Act for the delay caused. This was only a **tentative view** expressed by the learned Authority.

It was further mentioned in this order that this view of the Authority shall be confirmed on the next date after hearing both the parties. So, in this order dated 19.01.2021, the learned Authority has not taken any conclusive view with respect to the liability of the appellant-Corporation regarding payment of compensation for the delay in completion of the development works.

32. Then, there is order dated 16.03.2021. It is apposite to mention that in this order the learned Authority after going through the rival contentions of the parties has come to the definite conclusion that the prayer of the complainant company (respondent herein) that they should be awarded interest for the period of delay caused in completion of the infrastructure from the year 2014 till date cannot be accepted. It was further observed that the respondent had given an undertaking that they will not insist for development of infrastructure and thereby they have waived off right to seek compensation for delayed completion of infrastructure works. It was further observed that the respondent has also defaulted in making payment of instalments. The learned Authority further observed that in these circumstances it does not appear justified that the interest for the delayed period should be awarded to the complainant company.

33. As far as the issue regarding payment of compensation for delay in completion of infrastructure was concerned, that was finally decided by the learned Authority against the respondent-allottee vide this order dated 16.03.2021, but in the impugned order the learned Authority has reviewed its order dated 16.03.2021.

34. We do not find any substance in the contention raised by learned counsel for the respondent that the order dated 16.03.2021 was an interim order. He has quoted Section 2 (14) of the Code of Civil Procedure, 1908 (hereinafter referred to as CPC which reads as under:-

> ***Section 2(14) of the CPC***
>
> *"(14) "order" means the formal expression of any decision of a Civil Court which is not a decree;"*

35. As per the aforesaid definition "order" means the formal expression of any decision of a Civil Court which is not a decree. In the order dated 16.03.2021, the learned Authority has given a categoric finding that in view of the undertaking dated 16.04.2013, the respondent had waived off their right to seek compensation for delayed completion of infrastructure works, that they had voluntarily taken the possession of the plot without development of infrastructure, that they had also defaulted in payment of the instalments and it did not appear justified that the interest for the delayed period should be

awarded to the complainant company. The aforesaid order is completely the formal expression of the learned Authority with respect to the issue of grant of compensation for delay in completion of the infrastructure works. It cannot be stated to be the interim order. Thus, the plea raised by learned counsel for the appellant that this order will merge with the final order carries no substance.

36. The order of the learned Authority dated 14.07.2021 is very important which reads as under:-

> *"1. Shri Venket Rao, learned counsel for the complainant has today urged the Authority to* ***reconsider its observation recorded in Para 3(iii) of its order dated 16.03.2021 to the effect that "It does not appear justified that interest for delayed period should be awarded to the complainant party****."*
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> *2.* ***Acceptance of submission so made, in essay, will tantamount to review of the referred order by the same bench which had passed the order. Also the complainant for this purpose is required to file an application*** *and supply its copy to the opposite party for enabling the latter to submit his response to each ground raised for reviewing the order. No application is yet filed for modification of the order in question.*
>
> *3. Learned counsel prays that he shall be allowed some time to file application detailing out the grounds for modification of the order dated 16.03.2021. Learned counsel also seeks adjournment for*

*addressing arguments about the scope of appointing Local Commissioner for assessing the quality and also the deficiencies, if any, occurring in the infrastructure facilities required to be developed by the respondent.*

*4. Considering that the observations sought to be modified were recorded by a bench comprising of all the three members of this Authority, the case is being adjourned with the directions that the complainant shall file the necessary application and supply its copy to the respondent at least 15 days prior to the next date of hearing, so that the respondent is able to file his reply as well before the next date of hearing.*

*5. Adjourned to 08.09.2021."*

37. In the aforesaid order, the learned Authority has itself mentioned that to reconsider the observations in para no.3(iii) of the order dated 16.03.2021 with respect to the interest for delayed period will tantamount to review of the said order and the respondent was advised to file application raising therein the grounds for reviewing the order. Thus, from the proceedings of the learned Authority, particularly, the order dated 14.07.2021, it comes out that reconsideration of para no.3(iii) of the order dated 16.03.2021, will amount to reviewing the said order. Acting upon the observations of the learned Authority in this order, the respondent had moved an application presumably on the basis of which the impugned

order has been passed, though the reference of this application has not been given in the impugned order.

38. In the order dated 16.03.2021, the learned Authority has categorically held that the prayer of the respondent-Company that they should be awarded interest for the period of delay caused in the construction of infrastructure from the year 2014 till date cannot be accepted. Thereafter, the learned Authority has expressed the reasons for denial of this relief to the respondent company. Learned counsel for the appellant has placed on file the copy of the comprehensive complaint details downloaded from the website of the learned Authority, which shows that the order was reserved on 16.03.2021 and was uploaded on 19.04.2021. As a general practice, the order is only reserved when both the parties are heard on merits of the matter in issue. So, the order dated 16.03.2021 satisfies the requirement of Section 2(14) of the CPC as the said order is the formal expression of the decision of the learned Authority to deny the interest for delayed period to the respondent company.

39. Thus, it is apposite to say that the order dated 16.03.2021 was not an interim order, rather, it was an order vide which the learned Authority had given the formal expression of its decision to deny the delayed interest for delay in the completion of the infrastructure works by giving the

detailed reasons therein. The learned Authority exercised the powers to review the order dated 16.03.2021 by passing the impugned order. Now we are to see as to whether the learned Authority was competent to review the order dated 16.03.2021 and to pass the impugned order dated 10.11.2021.

40. Section 38, 39 of the Act, and regulation 23(a) and 28 of the Regulations read as under:-

> *"**38. Powers of Authority**.—(1) The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.*
>
> *(2) The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.*
>
> *(3) Where an issue is raised relating to agreement, action, omission, practice or procedure that—*
>
> *(a) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or*
>
> *(b) has effect of market power of monopoly situation being abused for affecting interest of allottees adversely,*

*then the Authority, may, suo motu, make reference in respect of such issue to the Competition Commission of India.*

***39. Rectification of orders**.—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."*

*"**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 sufficient reasons, may apply for a review of such order within forty five days of the date of direction, decision or order, as the case may be, to the Authority."*

> ***"28: General power to amend/rectify:***
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> *The Authority may, at any time and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceedings before it (including any clerical or arithmetical error in any order passed by the Authority), and all necessary amendments, rectifications shall be made for the purpose of determining the real question or issue arising in the proceedings."*

41. Section 39 of the Act merely authorize the learned Authority to rectify the mistake apparent from the record and to amend the order passed by it obviously to make the correction of the said mistake. In the second proviso, it has been categorically mentioned that while rectifying any mistake apparent from the record, the Authority shall not amend the substantive part of its order passed under the provisions of the Act. Thus, under Section 39 of the Act, the learned Authority is only competent to rectify the mistake in the order which is apparent from the record and while doing so it cannot amend or alter the substantive part of its order. So, the impugned order dated 10.11.2021 passed by the learned Authority obviously does not fall in the ambit of Section 39 of the Act.

42. Learned counsel for the respondent has vehemently relied upon Section 38, Regulations 23(a) and 28 of the Regulations. Section 38(2) of the Act provides that the

Authority shall be guided by the principles of natural justice and, subject to other provisions of this Act and the rules made there under, the Authority shall have power to regulate its own procedure. The Authority has been given power to frame the regulations under Section 85 of the Act.

43. It is settled principle of law that the rule/regulations cannot be contrary and repugnant to the provisions of the principal enactment. Reference can be made to case ***Subhash Chand Aggarwal Versus Union of India & others, 2012(7) R.C.R. (Civil) 2514***. In this very case, it was held that if the rules are beyond the nature, object and scheme of the Act, then it does not conform to the principal enactment.

44. In ***Additional District Magistrate (Rev.) Delhi Admn. Versus Siri Ra, 2000(5) SC 451***, it has been laid down as under:-

> *"17. It is well recognized principle of interpretation of a statute that conferment of rule making power by an Act does not enable the rule making authority to make rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto. From the above discussion, we have no hesitation to hold that by amending the Rules and Form P.5, the rule making authority have exceeded the power conferred on it by the Land Reforms Act."*

45. Same legal position has been reiterated by the Division Bench of Hon'ble ***Alka Matoria Versus Maharaja Ganga Singh University and others, 2013(5) R.C.R. (Civil) 881***.

46. Regulations are in the form of the subordinate legislation which cannot exceed the limits conferred by the principal act. From the scheme of the Act, it comes out that the legislature in its wisdom did not consider it appropriate to confer the powers of review upon the learned Authority. The Authority was only authorise to rectify the mistake apparent from the record by amending the order and without changing or altering the substantive part of the order as per Section 39 of the Act. If the intention of the legislature would have been to bestow the powers of review to the learned Authority, it could have been mentioned in Section 39 of the Act. At the same time the legislature has consciously conferred the powers to the Appellate Tribunal under Section 53(4) (e) of the Act to review its decisions. Thus, from the scheme of the Act, it comes out that the intention of the legislature was to confer the powers of review only to the Tribunal and not to the Authority.

47. Regulation 23(a) of the Regulations reproduced above is similar to Order 47 Rule I of the Code of Civil

Procedure. The comparative table of the above provisions is reproduced as under:-

| ***Regulation 23(a)*** | ***Order 47 Rule I C.P.C.*** |
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| *"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 sufficient reasons, may apply for a review of such order within forty five days of the date of direction, decision or order, as the case may be, to the Authority.* | *"**1. Application for review of judgment** - (1) Any person considering himself aggrieved-*<br><br>*(a) by a decree or Order from which an appeal is allowed, but from which no appeal has been preferred,*<br><br>*(b) by a decree or Order from which no appeal is allowed, or*<br><br>*(c) by a decision on a reference from a Court of Small Causes,*<br><br>*and who, from 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 decree was passed or Order made, or on account of some mistake or error apparent on the face of the record of for any other sufficient reason, desires to obtain a review of the decree passed or Order made against him, may apply for a review of judgment to the Court which passed the decree or made the Order.*<br><br>*(2) A party who is not appealing from a decree on Order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is* |

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| | *common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review."* |

48. If we compare both the provisions, it appears that the wording in Regulation 23(a) of the Regulations has been borrowed from Order 47 Rule 1 C.P.C. Thus by virtue of Regulation 23(a) of the Regulations, the learned Authority has usurped or bestowed upon itself the powers of review which are beyond the scope of the principal enactment i.e. the Act.

49. We are conscious of the fact that this Tribunal is not the Constitutional Court and cannot adjudicate upon the virus of the rules/regulations, but such excessive subordinate legislation of the competence of the Authority and being beyond the scheme of the Act, can be well ignored by this Tribunal.

50. Moreover, the learned Authority has nowhere mentioned in the impugned order that the learned Authority is exercising the powers provided in Regulation 23(a) and 28 of the Regulations. There is no reference, at all, in the impugned order as to what new facts and matter was discovered or evidence brought on record, which was not within the knowledge of the respondent and could not be produced by it

at the time of passing the order dated 16.03.2021. Learned counsel for the respondent could not point out any mistake or error apparent from the face of record in the order dated 16.03.2021, or any other sufficient reason for review of the order. Regulation 28 of Regulations is only with respect to correction or error in the proceedings that will not help the case of the respondent.

51. The entire dispute raised before us is with respect to grant of interest for delay in completion of infrastructure works. We have carefully perused the complaint filed by the respondent. We have not been able to find out any plea in the complaint to claim such relief. Thus, the controversy so raised was not the matter in issue before the learned Authority and was beyond pleadings.

52. We abstain from expressing any opinion upon the legality of undertaking dated 16.04.2013 as any opinion expressed by this Tribunal on this issue may adversely affect the rights of either of the parties in any subsequent proceedings before the learned Authority or this Tribunal. Moreover, the present appeal can be disposed of only on the issue of competency of the learned Authority to review the order dated 16.03.2021.

53. At the cost of repetition, it is pertinent to mention that the impugned order dated 10.11.2021 has totally reversed

the observations/findings of the learned Authority in its previous order dated 16.03.2021 on the issue of payment of interest for delay in completion of infrastructure works. Such a somersault is not legally permissible. This problem arises as there is a tendency with this Authority to pass the multiple orders to substantially decide the rights of the parties instead of passing a composite order to dispose of the complaint deciding all the issues together. It is well recognised legal requirement that all the issues arising in the lis should be decided together by passing a composite order than in parts. Reference can be made to the Full Bench judgment of Hon'ble Himachal Pradesh High Court in case ***Prithvi Raj Jhingta & Anr. Versus Gopal Singh & Anr., 2007(3) R.C.R. (Civil) 407***.

54. Thus, keeping in view our aforesaid discussion, the learned Authority had no jurisdiction to review its order dated 16.03.2021 with respect to the validity of the undertaking dated 16.04.2013 and the claim for grant of interest for delay in completion of infrastructure works by the appellant-Corporation, as both these issues were decided by the learned Authority substantially in the order dated 16.03.2021.

55. Consequently, the present appeal is hereby allowed, the impugned order dated 10.11.2021 qua the observations made by the learned Authority with respect to the validity of

the undertaking dated 16.04.2013 and the claim of the respondent for grant of interest for delay in completion of infrastructure works/facility is hereby set aside.

56. The copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority.

57. File be consigned to the record.

Announced:
April 22, 2022

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

*CL*