



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 07.02.2024
Complaint No.	E/3161/2023/1662/2022 case titled Haamid Real Estate Pvt. Ltd. Vs Nick Mehta
Complainant	Haamid Real Estate Pvt. Ltd.
Represented through	Ms. Tanya Adv proxy on behalf of Mr. Harshit Batra Adv
Respondent	Nick Mehta
Respondent Represented through	Akshay Lodhi Adv and Pawan Reley Adv
Last date of hearing	02.02.2024
Proceeding Recorded by	Uma Gaur

Proceedings

This is a petition filed by promoter seeking execution of order dated 03.03.2023, passed by Haryana Real Estate Regulatory Authority, Gurugram, (in brief the Authority).

On 22.09.2023, ^(date fixed) no objections were filed on behalf of respondent/allottee, despite service of notice. Recovery certificate was ordered to be issued to the collector concerned, to recover decretal amount, presuming that respondent had no objection, against the execution petition or the calculation of the decretal amount.

It is contented by the learned counsel appearing on behalf of the respondent/ complainant that Recovery Certificate has been issued wrongly, his client was not liable to pay the amount, as is claimed by the promoter, in its calculation, filed along with execution petition. Contending all this and also the fact that his client(allottee) has also filed the execution petition, which is also pending before this forum, learned counsel requests to dismiss present petition and to recall order issuing Recovery Certificate.

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अर्तगत गठित प्राधिकरण

भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16

Handwritten signature and initials



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

On the other hand, according to learned counsel appearing for petitioner/ promoter, through order under execution, his client i.e. promoter was directed to refund the amount but subject to deduction of statutory dues, brokerage, etc. The statutory dues after adding brokerage amount, exceeded the amount to be refunded to the allottee and hence there was no illegality in issuing RC. Learned counsel contended that any of the parties could file execution petition, if same was entitled to any relief. It is further plea of learned counsel that after order of issuing RC, this forum cannot recall its order, otherwise, it will amount review of order, which, this forum is not empowered to do.

As mentioned above, the respondent/ promoter was obliged to refund the amount paid by allottee, subject to deduction of statutory dues, brokerage i.e. 0.5% and 10% of basic sale price, being earnest money. The petitioner/ promoter has claimed recovery of Rs.9,51,228/-. According to it, a sum of Rs.10,89,738/- is deducted as earnest money (10%) + Taxes. As stated earlier, through order under execution, promoter is allowed to deduct 10% of BSP, being earnest money. Basic Sale Price(BSP) of unit was Rs.86,16,890/- as is reproduced by the Authority in its order under execution. Similarly, the petitioner has deducted amount of taxes, VAT, GST, etc. total amounting Rs.11,15,714/-. Learned counsel for respondent/ allottee denies liability of his client to pay these taxes.

All aforesaid issues, require adducing of evidence by the party concerned, to be decided. None of the parties has filed even copy of BBA. The Adjudicating Officer, being executing forum, is not required to ask parties to adduce evidence to prove any fact. When, several issues have arisen, which require leading of evidence, in my opinion all this is beyond jurisdiction of an executing court. ~~Considering same~~ It is not established that petitioner/ promoter is actually entitled to recover amount as claimed by it.

So far as plea of learned counsel for petitioner/ promoter, that this forum has no power to review its order, is concerned, There is nothing in The Real Estate (Regulation and Development) Act, 2016 (in brief Act of 2016), which debars the Authority or AO to review its/ his order. Moreover, there is a famous maxim i.e **Actus Curiae Neminam Gravabit** meaning, that act of the court shall prejudice no one. This maxim was followed by the Supreme Court of India in case titled as **Odisha Forest Development Corporation Ltd. Vs.**

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह. सिविल लाईंस. गुरुग्राम. हरियाणा

Anupam Traders & Anr., Civil Appeal, SLP(c) no. 17627/2019, thus it has assumed character of a judicial precedent.

It is pointed out that the JD/ complainant has approached Hon'ble High Court of Punjab and Haryana by filling a writ petition, but there is no stay on proceeding/ disposal of execution petition. When there is apparent mistake in issuing Recovery Certificate, I do not think it proper to wait for order of Hon'ble High court in this regard.

Plea of respondent/ allottee is thus allowed. Execution petition in hands is thus dismissed. Although order was passed to issue Recovery Certificate, no RC has been issued till now. There is no need to issue Recovery Certificate. ~~13/02/2024~~

File be consigned to record room.

(Rajender Kumar)
Adjudicating Officer
07.02.2024