



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	Tuesday and 15.11.2022
Complaint No.	E/6217/2022/1403/2021 Case titled Abhishek Sharma Vs Spaze Tower Private Limited
Complainant	Abhishek Sharma
Represented through	Mr Sukhbir Yadav Adv
Respondent	Spaze Tower Private Limited
Respondent Represented through	Mr Harshit Batra Adv
Last date of hearing	
Proceeding Recorded by	Jyoti Malik

Proceeding

Heard on objections filed by JD. The latter objects execution
petition on four counts-

- (i) (v) This forum (AO) is not empowered to execute decree.
- (ii) (vi) No interest can be awarded on statutory dues.
- (iii) (vii) Certain amount is payable by the DH also to JD and latter is
entitled for interest, at same rate.
- (iv) (viii) No interest can be charged, which is not allowed in the decree.

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



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Objection no: (i)- It is submitted by learned counsel for the objector/JD that order under execution was passed by Haryana Real Estate Regulatory Authority Gurugram (in brief the authority) and hence only the authority was empowered to execute its order and not this forum, i.e. adjudicating officer.

There is no denial that order under execution was passed by the authority. The authority by passing a resolution/**Order no: 9/1-2022 HARERA/GGM(admin) dated on 16.03.2022**, delegated its powers to execute orders/decrees passed by it, to be executed by the adjudicating officer. The power of authority to delegate its powers is upheld by Hon. High Court of Punjab and Haryana in case titled as M/s International Land Developers Private Limited V/s Aditi Chauhan CWP 7750 of 2020 (O & M). Considering all this, I find no substance in this objection raised by JD. Same is dismissed.

Objection no(ii):- It is submitted by learned counsel for JD that interest could be paid on the amount paid by the allottee against the unit in question, after deducting the amount, which meant to pay statutory dues, but the DH has calculated the interest on entire amount i.e. including amount of statutory dues also. According to learned counsel, his client (JD) has already paid the amount of EDC and IDC to the Government agency concerned. Learned

counsel referred a case titled as ***Roopa Joshi V/s GPM Developers Private Limited***, decided by HARERA Panchkula. According to him, the HARERA Authority, Panchkula has ruled that delay interest is calculated after deducting EDC/IDC charges and Service Tax from the total paid amount. The amount of such taxes is not payable to the builder rather same is required to be passed on by the builder to concerned Revenue Department/Authority.

On the other hand, as per learned counsel for decree holder, in view judgement passed by High Court of Punjab and Haryana, in case ***Emaar India Limited V/s Kaushalpal Singh. Harera appeal no. 95 of 2021***, his client has right to claim interest, on entire amount.

Through decree under execution, the authority directed the respondent to pay interest, at the prescribed rate that is 9.30 per cent per annum, for every month of delay, **on the amount paid by the complainant**, from due date of possession..... From all this, it is clear that authority directed respondent to pay interest on the entire amount paid by the complainant, during the period as mentioned therein. Decree does not say that no interest will be charged on the amount which was paid to the builder in the name EDC/IDC charges etc. Even otherwise, JD could not show any



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evidence to verify that amount of EDC/IDC etc. received from allottee, has been actionally paid to the Revenue Department/ Authority concerned. Considering all this, I find no substance in this objection also raised by JD/Respondent.

Objection no (iii):- According learned counsel for JD, there is an outstanding amount of Rs. 13,60,496/-, due against DH and his client (JD) is also entitled to interest on this amount.

True, by passing order under execution, the authority directed complainant to pay outstanding dues to the respondent/JD. Although JD claims that there ^{were} ~~was~~ outstanding dues of Rs. 13,60,496/-, against DH/complainant, no such detail, as how this amount was outstanding against DH is given by JD. In the absence of such detail, JD cannot claim this amount or interest thereupon. With this observation, this objection is also dismissed.

Objection no (iv):- It is submitted by learned counsel for JD that through order under execution, his client that is respondent, was directed to pay interest at prescribed rate for certain period i.e. 01.12.2015 till 01.02.2021 but the DH has calculated interest till the date of payment, which was not allowed by the authority.



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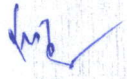
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True, the respondent was liable to pay interest for the period mentioned above, but at the same time, JD/Respondent was granted time of 90 days of order to pay said amount. Admittedly, the amount due has not been paid within 90 days. In such a circumstance, in my opinion, DH is entitled for interest till the date of realization of amount. Objection of JD in this regard is also dismissed.

Learned counsel for DH requests to attach assets/properties of JD to realize decretal amount. According to learned counsel his client(DH) has no knowledge about such assets/properties of JD. He requests for direction to JD, in this regard.

Request is allowed. JD is directed to disclose its assets/properties including details of bank account (s) and unsold inventory of units. Information is to be given in the form of an affidavit to be sworn by anyone from directors preferably by the managing direction. Copies of title deeds and statement of bank account (s) be also provided alongwith affidavit.

To come on 23.01.2023 for further proceedings


(Rajender Kumar)
Adjudicating Officer
15.11.2022