



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	Thursday and 13.04.2023
Complaint No.	E/6852/2022/1226/2021 Case titled Sunita Garg Vs BPTP Limited & Country Wide Promoters Private Limited
Complainant	Sunita Garg
Represented through	Ms. Priyanka Aggarwal Adv.
Respondent	BPTP Limited & Country Wide Promoters Private Limited
Respondent Represented through	Ms. Tanya Adv proxy for Mr. Harshit Batra Adv
Last date of hearing	
Proceeding Recorded by	Jyoti Malik

Proceedings

Heard on objections filed by JD. It is submitted by learned counsel for JD that order/decreed under execution was passed by the Authority. The authority delegated its powers to this forum ^(A.O) to execute said order, which is contrary to law. This forum (A.O) cannot execute order under execution.

Section 81 of Act of 2016 empowers the authority to delegate its power except power to make regulations to any member or officer of the authority..... Adjudicating officer can be termed as an officer of authority. Moreover, order/resolution of authority, Gurugram, delegating its powers to this forum to execute orders/decrees passed by same (Authority) has been upheld by the Hon'ble High Court of Punjab & Haryana in case titled as

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



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International Land Developers Private Limited Vs Aditi Chauhan & Ors

W.P.No.7738 of 2022. Considering same, I find no substance in this objection, raised by JD. Same is thus dismissed.

It is further the objection of JD/respondent that DH has wrongly calculated the amount of interest. The authority did not impose future interest upon his client, on payment due and hence in view of Section 34(2) of the CPC, DH is not entitled to calculate future interest.

The directions of the authority to respondent/JD to pay interest on the decretal amount, are in consonance with Rule 16 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in brief the Rules of 2017). Rule 16(2) reads as under:-

"Where an allottee does not intend to withdraw from the project and interest for every month of delay till handing over of the possession at such rate as may be prescribed ordered by the authority to be paid by the promoter to the allottee, the arrears of such interest accrued on the date of the order by the authority shall be payable by the promoter to the allottee within a period of ninety days from the date of order of the Authority and interest for every month of delay shall be payable by the promoter to the allottee before 10th day of the subsequent month."

This Rule clarifies that the arrears of interest and interest accruing subsequent to order/judgment, is to be paid by the promoter to the allottee, in case the allottee does not intend to withdraw from the project. The rule provides two different payments i.e (i) for payment of arrears of interest and (ii) payment of future interest to be paid as such----

(a) arrears of interest accrued on the date of the order by the authority shall be payable by the promoter to the allottee within a period of 90 days, from the date of order of the authority.

(b) interest for every month of delay shall be payable by the promoter before 10th day of subsequent month.

It is abundantly clear that JD/respondent in this case was liable to pay arrears of interest till 23.03.2021 i.e within 90 days of order. Admittedly, arrears of interest were not paid by JD, during this period or even till now.



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Word 'delay' has been used twice in sub rule (2), referred above. Earlier word denotes "delay in handing over possession of subject unit" while latter word speaks about delay in making payment of amount of interest, which the promoter was liable to pay, every month, subsequent to date of order.

There is no denial that JD neither paid arrears of interest accrued till the date of order by the authority, nor future interest, as was payable by the same, up to 10th day of each subsequent month. When JD/promoter failed to pay arrears of interest till 90th day of order (part A) and again, did not pay any interest accruing every month, thereafter, interest for each month is added to arrears of amount. Sub-rule I allows interest on refund of amount. As subsequent interest is also added to arrears entire amount becomes payable by JD, DH is thus entitled for interest on the entire amount payable by the JD i.e. arrears up to 90th day of order and subsequent interests added every month, when JD opted not to pay to same. All this is as per order/decreed under execution and does not amount going beyond it (order/decreed). Objection in this regard is dismissed.

Other objection raised by learned counsel for JD is that the authority while passing order/decreed under execution, has granted relief to complainant/ DH, which was not prayed even. Learned counsel requests to dismiss execution petition.

Learned counsel for JD did not explain as what relief has been granted to DH/complainant, which was not sought by latter (complainant). Moreover, admittedly, no appeal etc. has been filed against order/decreed under execution and same has become final. Being executing court, this forum cannot go beyond the decree. Without commenting on legal proposition, on this topic, request of JD to dismiss execution petition is declined.

It is further plea of learned counsel for JD that her client is entitled to deduct the amount of statutory dues i.e. EDC, IDC. According to her, JD has already paid the amount to Govt Agency concerned.



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On the other hand, as per learned counsel for DH, JD was not entitled to deduct the amount of EDC, IDC as the Authority has not allowed deduction of amount of EDC/IDC. Same (Authority) has allowed deduction of amount of the taxes only, and EDC/IDC is not a tax, imposed by Govt. on allottee.

I find weight in the contention of learned counsel for DH in this regard. Even otherwise, there is nothing on record to verify that any such amount has been paid by JD, to Govt. Agency concerned. This objection is also dismissed.

Both of learned counsels request for adjournment to give fresh calculation of amount. Allowed. Be filed till next date.

To come on 25.05.2023 for further proceedings.

(Rajender Kumar)
Adjudicating Officer
13.04.2023