



Real Estate Regulatory Authority, Punjab
First Floor, Block-B, Plot No. 3, Sector-18 A, Madhya Marg,
Chandigarh – 160018

Execution Application No. 1 of 2022
IN GC No. 1555/2022UR

Date of filing: 13.01.2023
Date of decision: 02.08.2023

1. Rajiv Arya R/o House No. 313, Sector-7, Panchkula, Haryana - 134109.
2. Renu Nayyar R/o House No. 226, Sector-7, Panchkula, Haryana - 134109

...Applicant(s)

Versus

Parsavnath Developers (AOP), 6th Floor, Arunachal, 19, Barakhamba Road,
Central Delhi, Delhi – 110001.

...Respondent

Application U/s. 40(1) of the Real Estate (Regulation & Development) Act, 2016 for execution of order dated 09.07.2021.

Present:-
1. Sh. Kshitij Sharma, Advocate for the applicants.
2. Ms. Rupali Shekhar Verma, Advocate for the Respondent.

ORDER

The present application has been filed by the Applicant for execution of order dated 09.07.2021.

2. This Authority in an order u/s. 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the 'Act, 2016') dated 09.07.2021 has held in the case of Rajiv Arya Vs. Parsavnath Developers (AOP) shall be liable to refund the entire amount, to the applicants alongwith interest @ 9.30% per annum till the amount was paid. For ready reference, relevant extract of order dated 09.07.2021 is reproduced hereunder:-

"4. The respondent is in multiple litigations with the owner of the land i.e. PSIEC and no time framework can be given for the outcome these litigations. The complainant(s) in this case have made a total payment of Rs.85.00 lacs (approx.) towards 85% of the total cost of the unit as far back as year 2008. More than 13 years have since elapsed and there is no possibility of the project taking off in the near future. No default can be ascribed to the complainant(s) in regards to timely payment plan. The complainant(s) have sought refund of the amount paid by them alongwith interest as per the provisions of the Act. As provided u/s. 18(1) read with Section 19(4), the complainant(s) are entitled to refund of the entire amount alongwith interest at the applicable rates as prescribed under the Act. As provided u/s. 18(1) read with Section 19(4), the complainant(s) are entitled to refund of the entire amount alongwith interest at the applicable rates as prescribed under the Act

and the Rules, as the promoter has failed to execute/complete the project for which a flat buyer agreement was executed with the complainant(s). The complainant(s) cannot be forced to stay in the project and wait indefinitely for the project to start.

5. *It is, accordingly, ordered that the respondent shall refund the entire amount, to the complainant(s), alongwith interest @ 9.30% per annum (today's highest MCLR rate of 7.30% plus 2%) from the dates on which the same were received till refund. The entire principal amount alongwith interest shall be paid with a period of 2 months from the date of this order"*

3. The Respondent i.e., Parsavnath Developers (AOP) did not give the refund alongwith interest as directed under Para 5 of the Order dated 09.07.2021. The order was duly served on the Respondent.

4. Accordingly, the applicant filed an execution application, No. 1 of 2022, dated 13.01.2023, before Real Estate Regulatory Authority, Punjab (Henceforth referred as Authority) requesting to direct the Respondent, M/s. Parsavnath Developers (AOP), to refund the principal amount of Rs.84,40,030/- alongwith interest of Rs.1,15,14,966/-, which in totality comes to Rs.1,99,54,996/-, till the filing of present execution application.

5. In consequence of filing of execution application, a notice was issued to Respondent i.e., Parsavnath Developers (AOP) to appear and submit reply on 02.03.2022 at 2.30 PM. However, the respondent joined the proceedings on 11.05.2022.

6. It is pertinent to note here that, on 08.06.2022, the respondent filed an application u/s. 39 of the Act, 2016 to correct the name of the respondent as Parsvnath HB Projects Pvt. Ltd. instead of Parsvnath Developer. He further filed objections to the execution application. The respondent has submitted on 08.06.2022 as follows:-

"1. That the present application if being filed on behalf of the Respondent seeking rectification of Order dated 09.07.2021 (hereinafter referred to as "Impugned Order") under Section 39 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'Act').

2. It is humbly submitted that this Hon'ble Authority was pleased to direct the Respondent to refund the entire amount of the Complainant along with Interest @ 9.30% per annum from the dates on which the same were received till refund within a period of 2 months. It is pertinent to state that this Hon'ble Authority passed the above mentioned directions in terms of the Flat Buyer Agreement dated 06.01.2007 (hereinafter referred to as "FBA"). Copy of the FBA is already on record and annexed as ANNEXURE C2 of the Complaint.

3. It is humbly submitted that the instant Application is being filed by the Respondent seeking rectification of the Impugned Order as the name of the Respondent has been mentioned as "Parsvnath Developers" instead of "Parsvnath HB Projects Pvt. Ltd."

4. *It is submitted that the said FBA was executed between "Parsvnath Developers (AOP)" and the Complainants only. That Parsvnath Developers is not privy to the FBA and as such is not a party to the present Complaint.*
5. *Moreover, the "Parsvnath HB Projects Pvt. Ltd." has taken over the business of Parsvnath Developers (AOP) as going concern w.e.f. 31.12.2012 and as such has also taken over all the responsibilities and liabilities of Parsvnath Developers (AOP). Hence, the name of the Respondent in the Impugned Order shall be substituted with Parsvnath HB Projects Pvt. Ltd. instead of Parsvnath Developers.*
6. *It is further submitted that no prejudice whatsoever shall be caused to the Complainant if the correct name of the Respondent is mentioned in the Impugned Order as it is a matter of record.*
7. *That the present Application is in the interest of justice."*

The submissions of the respondent were duly considered by the Authority. It may be mentioned that the respondent has not raised this issue during the proceedings u/s. 31 of the RE(R&D) Act, 2016 in this case. The order passed u/s. 31 of the Act states the name of complainant & respondent i.e. Rajiv Arya Vs. Parsvnath Developers respectively. The plea of the respondent has been duly considered by the Authority and orders were passed stating that the name of the respondent will be read as "Parsvnath Developers (AOP) instead of Parsvnath HB Projects Pvt. Ltd.. For ready reference, orders passed on 08.06.2022 is being reproduced hereunder:-

"Ms. Isha Janjua, Counsel for the respondent has filed an application under Section 39 of the Real Estate (Regulation and Development) Act, 2016 for correction of the name of the respondent; and has also filed objections to the execution application.

2. *The application under Section 39 of the Act is to the effect that the name of the respondent which was shown as 'Parsvnath Developers' in the complaint should be corrected to be read as 'Parsvnath Developers (AOP)'. The file relating to original complaint (GC No. 1555 of 2020), has been perused. It is seen that the respondent in the matter was 'Parsvnath Developers'. However the reply was filed on behalf of 'Parsvnath Developers (AOP)'. The allotment letter and agreement for sale have been executed in the name of 'Parsvnath Developers (AOP)'. Shri Sharma has no objection if the name of the respondent be corrected. Accordingly this application is allowed and **it is directed that the name of the respondent may be read as 'Parsvnath Developers (AOP)' in all proceedings relating to complaint No. 1555 of 2020 including the order dated 9.7.2021.***

3. *As far as objections are concerned it is seen that these have been filed on behalf of 'Parsvnath HB Project Pvt. Ltd.'. This entity seems to a complete stranger to the proceedings. However Ms. Janjua submitted that this company has taken over the business of 'Parsvnath Developers (AOP)' with effect from 31.12.12. However, no documents to show this have been produced on record. She could also not explain why this issue was not raised in the reply filed to the original complaint, and was being raised only at the execution stage. She seeks time to obtain instructions.*

4. *A copy of the objections has been handed over to Counsel for the applicant.*
5. *To come up on 29.06.2023 at 10.30 a.m. for further proceedings."*

[Emphasis supplied]

7. On 29.06.2022, no one attended proceedings on behalf of Respondent and matter got adjourned for 13.07.2022 at 10.30 a.m. for further proceedings and the following order was passed:-

"Ms. Isha Janjua has placed on record a copy of the agreement entered into between Parsvnath Developers (AOP) and Parsvnath Developers Limited and HB Estate Developers Limited and the Present Shareholders of the Company on 19.10.2012 and contended that the company has now been taken over by HB Estate Developers Limited. However, it is seen that the arbitration proceedings in Arbitration Case No. 129 of 2015 have been initiated in the name of M/s. Parsvnath Developers and not through HB Estate Developers Limited. These proceedings relate to the same land on which the real estate project was to be developed. Thus, the respondent cannot be allowed to run with the hare and hunt with the hound. Therefore, the proceedings will continue with M/s. Parsvnath Developers (AOP), as the respondent.

To come up on 27.7.22 at 10.30 a.m. for arguments"

In view of the above discussions, the preliminary objections so raised by the respondent had already been dealt with earlier by this Authority. Thereafter, it has been decided by the Authority to name the respondent as 'Parsvnath Developers (AOP)'. The quorum of Authority was not complete till December, 2022. The issue came up for arguments on 18.01.2023, but the Ld. Counsel for the respondent sought an adjournment and matter was fixed for hearing on 15.02.2023. On 15.02.2023, Ld. Counsel for the applicant submitted his written submissions and respondent was directed to file his submissions too. However, the respondent did not submit any written arguments or further submission.

8. On, 03.05.2023 the matter was argued with the following interim orders:-

"Calculation sheet duly signed by the learned Counsel appearing for the complainant-application has been filed and a copy thereof has been supplied to the opposite learned Counsel. However, it is noticed that respondent has not complied with the earlier order with regard to submission of written arguments. The learned Counsel appearing on behalf of the respondent seeks further time to file the written submissions. He may do so within a week's time with an advance copy to the opposite learned Counsel....."

The Respondent and Applicant argued the issue. Sh. Kshitij Sharma, Ld. Counsel for the applicant submitted that since the order dated 09.07.2021 had not been complied with, by the respondent; the applicant has filed the instant execution application for recovery of amount due. He further submitted a copy of latest calculation sheet claiming refund of principal amount of Rs.84,40,030/- and Rs.1,25,42,893/- as interest on the principal amount, which in totality comes to Rs.2,09,82,923/- till 3rd May, 2023. However, the respondent reiterated his arguments limited to the extent of his written reply already submitted e.g. Preliminary Objection on technical ground of name of the respondent-promoter etc., which was already dealt by this Authority during the proceedings. Further, no objection (oral or in written) was raised by the Ld. Counsel for the respondent as regards the

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calculation submitted by the Ld. Counsel for the applicant relating to the amount payable of Rs.2,09,82,923/-.

9. Based on the written and oral submissions of both the appellants as well as the respondent, we are of the view that the respondent had failed to comply with order dated 09.07.2021. In these circumstances, the respondent is directed to refund the principal amount i.e., Rs.84,40,031/- paid by the complainants alongwith arrears of interest accrued on it, till the date of this order i.e., Rs.1,27,88,771/- (totaling to Rs.2,12,28,802/-). The details of payment and interest accrued thereupon is given as under:-

Interest payable from	Amount	Interest Calculated till	Rate of Interest as per order	Tenure	Interest Amount
1-Apr-2006	9,45,000.00	31-Jul-2023	9.30%	17 years, 4 months	15,24,383
1-Sep-2006	4,99,669.00	31-Jul-2023	9.30%	16 years, 11months	7,86,539
1-Oct-2006	9,99,337.24	31-Jul-2023	9.30%	16 years, 10months	15,65,439
1-Oct-2006	9,99,337.24	31-Jul-2023	9.30%	16 years, 10months	15,65,439
1-Apr-2007	9,99,337.78	31-Jul-2023	9.30%	16 years, 4months	15,19,097
1-Oct-2007	9,99,338.00	31-Jul-2023	9.30%	15 years, 10months	14,72,501
1-Nov-2007	9,99,338.00	31-Jul-2023	9.30%	15 years, 9months	14,64,608
1-Dec-2007	9,99,338.00	31-Jul-2023	9.30%	15 years, 8months	14,56,969
1-Mar-2008	9,99,336.00	31-Jul-2023	9.30%	15 years, 5months	14,33,795
	84,40,031				1,27,88,771

10. Accordingly, the execution application is **allowed**. Recovery Certificates be issued to the concerned District Collector.

Date: 02.08.2023



(Rakesh Kumar Goyal),
Member



(Satya Gopal),
Chairman



(Ajay Pal Singh),
Member

02.08.2023

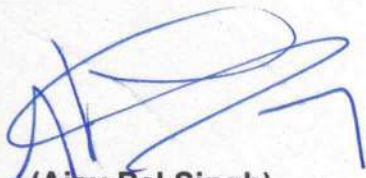
Rajiv Arya

Vs.

Parsvnath Developers (AOP)

Present:- 1. Sh. Kshitij Sharma, Advocate for the applicant.
2. Ms. Rupali S. Verma, Advocate for the respondent.

Vide separate order, present execution application is allowed.



(Ajay Pal Singh)
Member



(Satya Gopal)
Chairperson



(Rakesh Kumar Goyal)
Member