

**BEFORE THE CHAIRPERSON, REAL ESTATE REGULATORY
AUTHORITY, PUNJAB**

Execution Application No.28 of 2020
in

Complaint No.GC 1357 of 2019

Date of Institution :14.10.2020

Date of Decision: 23.02.2022

1. Mohinder Jit Kaur w/o Shri Harmit Singh
2. Harpreet Kaur w/o Shri Randeep Arora
3. Randeep Arora s/o Shri Harmit Singh

All residents of House No.1078, Phase 9, Mohali, Punjab-160062

....Applicants

Versus

1. M/s Sukhm Infrastructure Pvt. Ltd., Aeropolis City, Sector 66-A, Mohali, Punjab-160062
2. M/s Aeropolis Infrastructure Pvt. Ltd., Aeropolis City, Sector 66-A, Mohali, Punjab-160062
3. M/s Acme Builders Pvt. Ltd. GH-10, JLPL, Sector 90-91, Mohali, Punjab-160071
4. M/s GBP Pvt. Ltd., SCO No.196-197, Sector 34-A, Chandigarh, 160022

.... Respondents

Present : None for the complainant

Shri Kunal Thapa, Advocate for respondents no.1 & 2.

ORDER

This order will dispose off an execution application filed by the applicant seeking implementation of the order dated 03.03.2020. Through this order the respondent had been directed to pay interest to the applicant for the delay in handing over possession of the plot allotted to her in the project "Aeropolis City" developed by the respondents. This interest was to be calculated for the period of delay till the actual delivery of possession. However, in view of the fact that the initial payment was made by the applicant way back in the year 2010, it had been ordered that interest on amount of Rs.72.10 lakhs i.e the amount deposited more than 5 years

before the passing of the above order, should be paid within 3 months of the order.

2. Since this order was not complied with by the respondent, the present execution application has been filed seeking payment of interest of Rs.37,43,946/-.

3. Notice was issued to the respondents. Respondents no.3 and 4 were deleted from the array of the respondents vide order dated 02.02.2021. A short reply was filed by respondents no.1 and 2 in which the solitary contention urged was that the respondents wanted to file a review/ appeal against the order dated 03.03.2020, and hence the execution proceedings should be kept in abeyance. This contention was rejected and the matter fixed for arguments.

4. It may be noted that during the pendency of these execution proceedings Counsel for the respondent had submitted on 30.07.2021 that they were willing to comply with the order passed by the Authority, and sought time to do so. This was allowed, but it was also directed that in order to demonstrate their bona fides some payment should be made before the next date of hearing i.e 02.09.2021. On this latter date, it was noted that no payment had been made and therefore it was specifically directed that payment of Rs.3.00 lakhs should be made before the next date of hearing. The respondents thereafter filed CWP No.19781 of 2021 challenging the order dated 03.03.2020. The operative part of the order dated 29.09.2021 of the High Court in this petition is reproduced below:-



".....Notice of motion, returnable for 15.12.2021.

No coercive steps be taken against the petitioner till the next date of hearing".

The writ petition is still pending and now fixed for 25.04.2022. No further orders of the High Court have been received.

5. Arguments were heard on 10.02.2022. Shri Vipin Kumar appearing on behalf of the applicants reiterated the contents of the application. He pointed out that the respondents were wilfully delaying the implementation of the order dated 03.03.2020, and the application therefore deserved to succeed. He also submitted that the injunction ordered by the High Court on 29.09.2021 in CWP No.19781 of 2021 did not amount to a stay on conduct of these proceedings. On the other hand, Shri Kunal Thapa, Counsel for the respondents has raised a two-fold argument. He firstly contended that carrying on with these proceedings would amount to a violation of the order of the High Court since it had been clearly held that coercive steps were not to be taken against the petitioner. He submitted that issuance of recovery certificate to the concerned Collector for recovery of any amount from the respondents would amount to a coercive process which was prohibited by the High Court. The order of the High Court of Bombay in the case cited **"2004(1) Mh.L.J K.G.Das & Co. Vs. Commissioner of State Excise"** was cited in this context. His second argument is about the lack of jurisdiction of a single-Member Bench to hear the matter in view of the fact that no stay had been granted by the Supreme Court of India against the judgment dated 16.10.2020 of the High Court in **"Janta Land Promoters Pvt. Ltd. Vs. Union of India and Ors."** (CWP No.8548 of 2020 and other connected matters). Thus, the High Court's conclusion that a single-Member Bench of the Authority could not hear and decide complaints under Section 31 of the Act of 2016 was still in force, and these proceedings were without jurisdiction, he concluded.

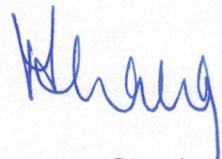


6. I have considered these arguments carefully, and am of the view that the order dated 29.09.2021 of the High Court does not amount to a stay on conduct of these proceedings. Only coercive steps against the respondents have been barred by the High Court, and not the actual conduct of these proceedings. In the case cited by Shri Thapa the court had held that the

action in sealing the godowns and seizing goods were coercive and should not be allowed since it was coercive in nature. In the present case however there is no attempt to seal any premises or seize any goods. The conduct of quasi-judicial proceedings per se cannot be held to be a coercive process. The second argument of Shri Thapa also does not hold any validity. The Supreme Court of India in "**M/s Newtech Promoters and Developers Pvt Ltd. Vs. State of U.P. and ors**" (Civil Appeal No.6745-6749 of 2021) has clearly held that powers can be delegated under Section 81 of the Act of 2016 to a single-Member Bench of the Authority to hear and decide complaints filed under Section 31 thereof. After passing of this order a delegation order has been issued vide No.RERA/Pb/Legal/2021/9046 dated 10.12.2021 delegating the powers to hear such complaints to single-Member Benches of the Authority. There is thus no procedural infirmity in these proceedings being conducted by a single-Member Bench.

7. As a result of the above discussion this execution application is accepted and a decree for Rs.36,59,075 (as per calculation sheet attached) is passed in favour of the applicants and against the respondents. This amount should be paid within 2 months from the date of issue of this order. However, in view of the order of the High Court it is directed that in case of non-payment by the respondents recovery certificate should not be issued to the concerned District Collector as long as the injunction dated 29.09.2021 continues to be in force.

Announced
23.02.2022


(Navreet Singh Kang)
Chairperson
Real Estate Regulatory Authority
Punjab

Details of Interest Calculation for order dated 03.03.2020					
Case Title - Mohinder Jit Kaur vs Aeropolis Infrastructure Private Limited					

Interest payable from	Amount	Date of Order	SBI highest MCLR as on 03.03.2020+2%	No. of months of delay	Interest Amount
03-03-2015	72,10,000	03-03-2020	10.15	60	36,59,075
	72,10,000				36,59,075

Principal Amount	-
Interest	36,59,075
Litigation Amount	-
Total	36,59,075



Navreet Singh Kang
Chairperson