



HARERA
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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 13.02.2020
Complaint No.	E/659/2020/225/2018 Case titled as Greenopolis Welfare Association VS Orris Infrastructure Pvt. Ltd. & another
Complainant	Greenopolis Welfare Association
Represented through	Shri Venket Rao, Advocate
Respondent	Orris Infrastructure Pvt. Ltd. & another
Respondent Represented through	Shri Vijay Gupta MD Orris Infrastructure Pvt. Ltd in person Shri Vineet Maheshwari HOD on behalf of Orris Infrastructure Pvt. Ltd Shri Surpreet Suri authorized signatory on behalf of Three-C Shelters Pvt. Ltd. Shri Anchit Oswal, Advocate on behalf of objector-Vistra ITCL Shri R.D. Vashisht proxy counsel for Shri Sanjeev Anand for M/s Delhi Brass & Metal Company
Last date of hearing	13.2.2020
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Counsel for respondent No.1- M/s Orris Infrastructure Pvt. Ltd has filed copy of the orders of Hon'ble High Court Punjab and Haryana dated

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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13.02.2020 passed in writ petition No.34244 and 36433 of 2019 and 2403 of 2020 (O&M) alongwith copy of writ petition No.2403 of 2020 filed by M/s Orris Infrastructure Pvt. Ltd. The orders of the Hon'ble High Court passed in above writ petition reads as under:-

It is informed that in all the connected matters, this Court has already passed interim orders staying operation of the notification dated 12.09.2019 issued by the respondents.

Keeping the concept of parity in mind, similar order staying operation of the notification dated 12.09.2019 is also passed in CWP No.2403 of 2020 as well.

List all the matters on 05.03.2020.

A copy of this order be placed in the connected files.

Sd/-
(Ravi Shanker Jha)
Chief Justice,

Dated 13.02.2020

Sd/-
(Arun Palli)
Judge

The counsel for respondent No.1 further invited attention of the Authority towards para Nos.7 and 8 of the CWP 2403 of 2020 M/s Orris Infrastructure Pvt. Ltd. and others versus State of Haryana and others wherein they have taken a plea before the Hon'ble High Court that under original Rule 27 of the Haryana Real Estate (Regulation & Development) Rules, 2017, no power was given to the Authority to enforce its own orders.



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Rather, it is the Adjudicating Officer of the Authority who has to execute the orders of the Authority. Hence, this Authority cannot execute its own orders in the present case.

Vide Regulation No.19.11 dated 26.03.2019, the Haryana Real Estate Regulatory Authority has clarified the above mentioned typographical error with regard to the provisions of Rule 27 (1) mentioned above and misinterpreted in different complaints by the litigants for their own gain with a view to thwart the due process of law. In the present writ petition No.2403 of 13.2.2020 filed by respondent No.1 in the Hon'ble High Court, the same stand has been taken.

The Real Estate Regulatory Authority Gurugram had already given its clarification in this context vide Regulation mentioned above which is as under:-

The matter raised before this Authority by the counsel regarding enforcement of orders, directions or the decisions of the Adjudicating Officer, Authority or the Appellate Tribunal.

Section 40(2) of Real Estate (Regulation and Development) Act, 2016 provides for enforcement of orders or directions issued by the Adjudicating Officer or the Authority or the Appellate Tribunal as the case may be as under:

Section 40 recovery of interest or penalty or compensation and enforcement of order, etc

“(1)

(2) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or



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regulations made thereunder, then in case of failure by any person to comply with such order or directions, the same shall be enforced, in such manner as may be prescribed."

Rule 27 of the Haryana Real Estate (Regulation and Development) Rules, 2017, prescribes regarding enforcement of orders, directions or the decisions of the Adjudicating Officer, Authority or the Appellate Tribunal as under:

Rule 27 Enforcement of order, direction or decision of adjudicating officer, Authority or Appellate Tribunal read with section 40 of the Real Estate (Regulation and Development) Act, 2016

"(1) Every order passed by the adjudicating officer or the Authority or the Appellate Tribunal, as the case may be, under the Act or rules and the regulation made thereunder, shall be enforced by an adjudicating officer of the Authority or Appellate Tribunal in the same manner as if it were a decree or a order made by a civil court in a suite pending therein; and it shall be lawful for the adjudicating officer or the Authority or the Appellate Tribunal, as the case may be, in the event of its inability to execute the order, send such order to the civil court to execute such order.

(2)
The word 'of' after the word, adjudicating officer and before the word Authority in the rule is irrelevant as is seemingly typographical error. For the following purpose /reason

- (i) Nowhere in the Act or rules, the word adjudicating officer of the Authority has been used. The word used in the Act rules or regulations are adjudicating officer or the Authority or the Appellate Tribunal;
- (ii) As per rules of judicial interpretation, the interpretation which further the objective for which the Act has been enacted is to be preferred than the interpretation which give rise to absurdity. It is very clear that orders passed by the adjudicating officer shall be enforced by the adjudicating officer, orders passed by the Authority shall be enforced by the Authority and the orders passed by the Appellate Tribunal shall be enforced by the Appellate Tribunal.

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- (iii) The enforcement of the orders is done normally by the court/tribunal or Authority who has passed it. It is normal judicial policy adopted in most of the statutes.
- (iv) Even in the first line itself, the word adjudicating officer or the Authority have been used not the word adjudicating officer of the Authority.
- (v) If **of** is not read as **or** and this typographical error is not taken notice then it will lead to harassment of complaints and delay in justice delivery.

From the above discussion it leaves no iota of doubt that this is a typographically error and the word '**of**' is to be read as '**r**' which make it sensible interpretation.

Accordingly, the Authority has already written to the Government of Haryana for correcting this typographical error and in the meanwhile, the Authority would be taking up enforcement of its orders as per above interpretation.

The action taken report submitted by the CIMO and L.O. of the Authority has been taken on record.

The Authority is of the considered view that M/s Orris Infrastructure Pvt Ltd will be at liberty to complete the project either through their joint developers or otherwise. There are also certain directions given by the Authority in pursuance to order dated 08.11.2019 and the promoters/developers/directors failed to comply with the same. So they were directed to comply with those directions by the Authority vide orders dated 04.02.2020. The matter was taken up on 18.02.2020 after a request for adjournment was received through email on behalf of Mr. Supreet Suri, MD of respondent no 2. Instead of complying with all the directions passed by the



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Authority on different dates, now respondent no. 1 M/s Orris Infrastructure Pvt. Ltd. filed an application for staying proceeding in the execution petition in view of orders dated 13.2.2020 passed by the Hon'ble High Court. It is pleaded that in CWP no 34244 of 2019 of Hon'ble High Court vide orders dated 25.11.2019 stayed the operation of notification bearing no. Misc 862/1/83/2019/ITCP dated 12.09.2019 issued by the Govt. of Haryana. Further, it was pleaded by respondent No.1 that Rule 27 of the un-amended rules of 2017 bars the Authority from executing its orders and the same can be enforced by the adjudicating officer of the Authority or appellate tribunal. However in view of certain amendments made in the rules by the State of Haryana vide notification bearing no. Misc 862/1/83/2019/ITCP dated 12.09.2019, the Authority has been given that power and the operation of that amendment besides other amendments has been stayed. So the proceedings pending before the Authority be stayed till the disposal of the abovementioned writ petition.

Rule 27 (1) of the un-amended rules provide as under:

"Every order passed by the adjudicating officer or the Authority or the Appellate Tribunal, as the case may be, under the Act or the rules and the regulation made thereunder, shall be enforced by an adjudicating officer of the Authority or Appellate Tribunal in the same manner as if it were a decree or a order made by a civil court in a suite pending therein; and it shall be lawful for the adjudicating officer or the Authority or the Appellate Tribunal, as the case may be, in the event of its inability to execute the order, send such order to the civil court, to execute such order".

It is pertinent to note here that the execution proceedings were initiated on 6.8.2019 well before the amended notification coming into



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effect. It is also pertinent to note that respondent no.1 have filed their reply to the execution petition and also the counsel for respondent No.1 had specifically stated at bar at earlier hearing held on 8.11.2019 that there was no other objection from their end except the objections stated in their reply. Further, subsequently on 04.02.2020 respondent no.1 filed a further additional objection to the execution proceeding, seems as if as an after thought. It is observed that neither in the reply nor in the additional objections, the respondent no.1 has taken any objection towards the proceedings being under the amended notification and therefore the Authority lacks the jurisdiction. It is also to be noted that respondent no.2 has not filed his reply till date nor has ever raised the question of jurisdiction at any of the proceedings till date.

A perusal of the un-amended rules shows that vide notification dated 12.09.2019, the words 'of' appearing in line 5 with the wording of "the adjudicating officer' has been clarified as "or" by the Authority. Otherwise, a perusal of whole sub-section makes it clear that it shall be lawful for the adjudicating officer or the Authority or the Appellate Tribunal, as the case may be, in the event of its inability to execute the order, send such order to the civil court, to execute such order. So in substance, the amendment made in the rules is only clarificatory in nature and does not affect the pith and substance of that rule. Moreover, it is not evident from a perusal of rule 27(1) that the Authority has no jurisdiction to enforce its orders and that would create an awkward situation for a legally constituted Authority to be toothless and a mere spectator and failing to achieve the objects embodied in the Act of 2016.



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However, considering the interest of 1862 home buyers in this project who have paid more than Rs. 1200 crores to the promoters/builders who considered themselves to be hopeless and hapless on account of delay of more than five years on account of non-completion of the project, the Authority is of a considered view that technicalities should not be in the way in monitoring of the project and the progress of the same should not be stopped in view of the pleas taken by the respondent No.1 on the basis of orders dated 13.02.2020 passed by the Hon'ble High Court in CWP writ petition No.2403 of 2020. Since the construction in this project has been negligible since the year 2016 when the possession of the allotted units was supposed to be delivered by the promoters to the home buyers, therefore, considering the plight of the home buyers and investment of their hard earned money in the project of respondents to get their dream homes in time and since, the matter is sub-judice before the Hon'ble High Court, as such, it is considered view of the Authority that this matter be transferred to the Adjudicating Officer for proceeding further in the execution petition.

The Registry is directed to transfer this case to the Adjudicating Officer immediately.

The parties to appear before the Adjudicating Officer on 19.3.2020.

(Sanir Kumar)

(Member)

18.2.2020

(Subhash Chander Kush)

(Member)