

**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**

**Civil Writ Petition No.4606 of 2020 (O & M)**

**Date of Decision: November 23, 2020**

M/S Sweta Estates Private Limited Pvt. Ltd.

..... PETITIONER(S)

*VERSUS*

State of Haryana & others

..... RESPONDENT(S)

...

**CORAM:**      **HON'BLE MR. JUSTICE JASWANT SINGH**  
**HON'BLE MR. JUSTICE SANT PARKASH**

...

**PRESENT:** - Mr. Vinod S. Bhardwaj, Advocate, for the applicant –  
petitioner.

Mr. Ankur Mittal, Additional Advocate General,  
Haryana, with Ms. Kushaldeep K. Manchanda, Advocate,  
for RERA.

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**Sant Parkash, J**

The aforesaid presence is being recorded through video  
conferencing since the proceedings are being conducted in virtual Court.

The present writ petition has been preferred under Article  
226/227 of the Constitution of India, for issuance of a writ in the nature  
certiorari for setting aside Order dated 28.01.2020 (Annexure P-1) passed by  
the respondents in Execution Petition No.RERA-GRG-6561 of 2019 arising  
out of complaint No.992 of 2018, whereby the authorities have issued

modified directions to the prejudice of the petitioner for compliance in an illegal manner and without affording any opportunity of hearing.

Further, prayer has also been made for issuance of a writ in the nature mandamus, restraining the respondent authorities from carrying out any further proceedings consequent upon impugned *ex-parte* orders dated 26.02.2019 (Annexure P-2) and 02.07.2019/03.07.2019 (Annexure P-3) passed by the Haryana Real Estate Regulatory Authority, Gurugram, in Complaint No.992 of 2018 as well as on the application filed by the petitioner for recalling/review of the said *ex-parte* order.

Respondent No.2, Real Estate Regulatory Authority, Gurugram (for short, 'RERA') extended its jurisdiction to Belgravia Phase-II, project developed by the petitioner. Petitioner had completed and delivered the project in the year 2014-2015 after obtaining the occupation certificate on 15.09.2014 i.e. much before the date of promulgation of RERA in the year 2016 and enforcement thereof w.e.f. 01.05.2017. The said project being a completed one, did not require any registration under the RERA since Real Estate (Regulation & Development) Act, 2006 does not have retrospective applicability.

Respondent No.3, an allottee in the project in question, approached State Consumer Disputes Redressal Commission, Haryana which was dismissed vide order dated 22.04.2016. He filed an appeal before the National Consumer Disputes Redressal Commission challenging the aforesaid order, which was later on withdrawn by him and a fresh complaint bearing No.1513 of 2016 was filed, which is still pending. Respondent No.3 also filed a compliant bearing No.992 of 2018 before respondent No.2 on the same cause of action and for similar relief. Petitioner was never served with

any notice regarding the complaint before respondent No.2. The said complaint was partly allowed by RERA vide order dated 26.02.2019 vide which it awarded the interest/compensation to respondent No.3. RERA also ordered to give the possession of apartment to respondent No.3 after getting the dues from him as per the terms and conditions of the agreement, however, respondent has not complied with the order of RERA till date of payment of his dues to take over possession of the apartment.

By separate *ex parte* proceeding, respondent No.2 vide order dated 26.02.2019 issued notice to the petitioner for non-registration of project under RERA despite the fact that occupation certificate was already granted on 15.09.2014 and the project was not required to be registered under the provisions of Section 3(2) of the Real Estate (Regulation & Development) Act, 2016. Petitioner preferred an application for review/recall of order dated 26.02.2019 under Regulation 23 of the Haryana Real Estate Regulatory Authority, Gurugram (General) Regulations, 2018, but the same was dismissed vide order dated 02.07.2019/03.07.2019. The petitioner filed CWP No.32999 of 2019 titled 'Sweta Estates Private Limited vs. State of Haryana & others'.

It is pertinent to mention here that earlier vide order dated 12.11.2020, the present writ petition had been ordered to be withdrawn pursuant to application bearing CM No.11995-C-CWP of 2020., with liberty to avail appropriate remedy before the Appellate Forum.

Today, another application has been filed on behalf of the petitioner, bearing CM No.12137 of 2020 for disposal of the main writ petition to avail appropriate remedy before the Appellate Forum in terms of/ in view of judgment dated 16.10.2020 passed by this Court in CWP

No.38144 of 2020 including CWP No.32999 of 2019 earlier filed by the petitioner.

Learned counsel for the applicant – petitioner has contended that during pendency of the instant writ petition, this Court vide judgment dated 16.10.2020 in CWP No.38144 of 2018 titled 'Experion Developers Pvt. Ltd. Vs. State of Haryana & others' has passed multifarious directions concerning and interpreted the provisions of RERA Act as well as Rules/Regulations framed thereunder, and accordingly, the petitioner wishes to get the present petition disposed of with liberty to approach the appropriate Appellate Forum.

While disposing of the bunch of petitions including CWP No.38144 of 2018 vide order dated 16.10.2020, this Court desisted itself from discussing the merits of the impugned order(s) of the Authority in the individual petitions as that would have to be examined by the Appellate Tribunal wherever appeals have been filed or are to be filed; and passed the following order:-

***“Directions***

94. Since these writ petitions have been pending for some time and interim orders have also been passed in many of them, as a one-time measure permission is granted to the Petitioners to make the pre-deposit in terms of the proviso to Section 43 (5) of the Act before the Appellate Tribunal, wherever appeals have already been filed and are pending, not later than 16<sup>th</sup> November, 2020. This will also be available to those Petitioners in whose cases the registry of the Appellate Tribunal did not process the appeals for failure to make the pre-deposit. Upon the making of such pre-deposit within the time granted by this Court, the Appellate Tribunal, where the appeal is still pending, will then proceed to hear the appeal on merits, which would include a challenge to the validity of the order of the Authority. On failure of the Petitioners to make the pre-deposit even within the extended time as granted by this Court, the Appellate Tribunal will proceed to pass appropriate consequential orders in the appeal.

95. Where the Petitioner's appeal already stands dismissed by the Appellate Tribunal for a failure to make the pre-deposit as directed, and that order is challenged in the writ petition, this Court as a one-time measure, permits the Petitioner to make the pre-deposit in terms of the proviso to Section 43 (5) of the Act before the Appellate Tribunal not later than 16<sup>th</sup> November, 2020. Upon making of the pre-deposit within the time granted by this Court, the Appellate Tribunal will recall its order dismissing the appeal, restore the appeal to file and proceed to dispose of the appeal on merits, which will include examining the validity of the order of the Authority. On failure of the Petitioners to make the pre-deposit with the time as granted by this Court, the order of the Appellate Tribunal dismissing the appeal will stand affirmed without any further recourse to this Court.

96. Where no appeal has yet been filed before the Appellate Tribunal, it is open to the Petitioner to challenge the order of the Authority before the Appellate Tribunal in accordance with law. The fact of pendency of present petitions will be taken into account by the Appellate Tribunal while examining the question of condoning the delay in filing the appeal.

97. With all of the above directions, the writ petitions are dismissed but no order as to costs. All the interim orders in the individual petitions stand vacated."

In view of the above, the writ petition is disposed of, with liberty as prayed for in CM No.12137 of 2020 and in terms of CWP No.38144 of 2018 titled 'Experion Developers Pvt. Ltd. Vs. State of Haryana & others', decided on 16.10.2020,.

**(Jaswant Singh)**  
Judge

**(Sant Parkash)**  
Judge

**November 23, 2020**

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Whether Speaking/ Reasoned:  
Whether Reportable:

Yes/ No  
Yes/ No