

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

102 (5 cases)

CWP No.22539 of 2021 (O&M)
DATE OF DECISION: 27th MAY, 2022

Rajinder Kumar Gautam and another

.... Petitioners

Versus

**State Consumer Disputes Redressal Commission U.T. Chandigarh
and others**

.... Respondents

CWP No.18489 of 2021 (O&M)

Vishwa Prakash and another

.... Petitioners

Versus

**State Consumer Disputes Redressal Commission U.T. Chandigarh
and others.**

.... Respondents

CWP No.20945 of 2021 (O&M)

Rahul Jain

.... Petitioner

Versus

**State Consumer Disputes Redressal Commission U.T. Chandigarh
and others**

.... Respondents

CWP No.22459 of 2021 (O&M)

Jatinder Batra and others

.... Petitioners

Versus

**State Consumer Disputes Redressal Commission U.T. Chandigarh
and others**

.... Respondents

CWP No.25497 of 2021 (O&M)

Yogesh Gauba and others

.... Petitioners

Versus

**State Consumer Disputes Redressal Commission U.T. Chandigarh
and others**

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Sunil Chadha, Senior Advocate with
Mr. Rahul Bhargava and Mr. Akshay Chadha, Advocates,
for the petitioners.

Mr. Anil Mehta, Advocate,
Senior Standing Counsel,
Mr. Mayank Sharma, Advocate,
Junior Panel Counsel and
Ms. Irvanneet Kaur, Advocate,
for the respondent-U.T. Chandigarh.

Mr. Vishal Gupta, Advocate,
for respondent Nos.2 and 3 in CWP Nos.18489, 22539 and
20945 of 2021.

Mr. Amit Jhanji, Senior Advocate with
Ms. Nikita Garg, Advocate,
for respondent No.4 in CWP-18489-2021.

Mr. Gaurav Kathuria, Advocate,
for respondent No.2 in CWP-22459-2021.

None for respondent Nos.2 to 5 in CWP-25497-2021.

None for respondent No.3 in CWP-22459-2021.

None for respondent No.4 in CWP-20945 & 22539-2021.

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RAJBIR SEHRAWAT, J. (ORAL)

This order shall dispose of abovementioned five writ petitions bearing CWP No.22539, 18489, 20945, 22459 and 25497 of 2021. Since an identical issue is involved in all these cases, therefore, for reference, the facts are being taken from CWP No.22539 of 2021.

The brief facts, as involved in the present case, are that M/s Ansal Lotus Melange (ALM) Projects Pvt. Limited is a real estate developer. The said company had developed and constructed the project

under the name and style as Orchard Country Luxury Apartments, Mohali situated at Village Sante Majra, Kharar-Landra Road, SAS Nagar, Mohali, Punjab. The petitioner No.1 herein; was the Director and petitioner No.2 herein; was the Promoter Director of the above said company. In the above said project launched by the company of the petitioners, the respondents No.2 and 3 had booked and were allotted the Unit No.1202, Tower No.1, Floor 12th measuring 1664 Sq.ft. at the base price of Rs.49,25,440/-. Pursuant to the said booking, a detailed flat/apartment buyer agreement dated 13.01.2014 was executed between the respondents No.2 and 3 and the above said ALM company. The respondents No.2 and 3 had paid an amount of Rs.2,53,882/- to the company as earnest money/booking amount. The company had promised to deliver the possession of the said unit to the respondents No.2 and 3 within a period of 48 months of the execution of the said agreement, with an extendible period of six months. The company failed to deliver the possession of said unit within the promised period i.e. on or before 12.07.2018.

Aggrieved against the non-fulfillment of the commitment by the company of the petitioners, the respondents No.2 and 3 instituted a consumer complaint before the State Consumer Disputes Redressal Commission, U.T. Chandigarh. In the said complaint, the company was made a party through its Managing Director/Director, besides the Managing Director and the Branch Manager of the company having been made party separately. The Consumer Commission disposed of the said complaint vide its judgment/order dated 10.06.2019 directing the company to refund the entire deposited amount to respondents No.2 and 3 along with interest. The respondents in the complaint were held responsible jointly and severally for the deficiency in service. Since, the order was not complied with, therefore,

the respondents No.2 and 3 had filed the execution petition before the State Consumer Commission. Still further, since the complaint was filed through the respondents in their official capacity and the execution could be done through natural persons, as well, therefore, the petitioners were arrayed as a party in the execution proceedings, though at the different stages. The Consumer Commission had, in the first instance, sought an explanation as to why the amount had not been paid as per its order. Although the petitioners were represented through their counsel, however, no response was filed before the Commission. However, in the proceedings before the Consumer Commission in the case involved in CWP No.22459 of 2021, an assurance was given by the counsel for the company that the amount would be paid to respondents No.2 and 3 through a demand draft within a period of two weeks from 21.01.2021. But even the said undertaking was not complied with. This led the commission to order initiation of the proceedings against the petitioners under Section 27 of the Consumer Protection Act, 1986 (for short, the Act) for punishment for non-compliance of the order of the commission. Since, the proceedings under Section 27 of the Act were ordered to be initiated, the warrant of arrests were issued for producing the petitioners before the State Commission to face the trial. It is at this stage that the present petition has been preferred by the petitioners.

Arguing the case, the counsel for the petitioners has submitted that the issue regarding the debts of the company, including the amounts of the respondents No.2 and 3 are already pending before the National Company Law Tribunal, Delhi (for short, the NCLT). The Tribunal has ordered moratorium qua the company, vide order dated 07.04.2021 (Annexure P-8). Therefore, all the proceedings qua the company or its officials have to wait till the decision of the NCLT in the matter. The

counsel has further submitted that the respondents had, in fact, also represented their claim before the Interim Resolution Professional (for short, IRP) and the resolution plan has even been approved by the COC. Therefore, the said claim is already subject to adjudication before the NCLT. Hence, the present proceedings cannot be continued as such. The counsel for the petitioners has also submitted that since the petitioners were not originally parties in the final order passed in the complaint, therefore, they are not even liable for non-compliance of the said order. Hence, they could not have been summoned by the Commission for inflicting punishment under Section 27 of the Act. Referring to the another writ petition bearing CWP No.20945 of 2021, which is being disposed of by this order only, the counsel for the petitioners has submitted that the petitioner in the said petition is not even the director of the company. The counsel for the petitioners has further submitted that the issue as involved in the present petition is already pending before Hon'ble the Supreme Court in SLP (C) Ns.3681 and 3682 of 2021 titled as ***Gurjeet Singh Johar and another Vs. Union of India and others.***

On the other hand, the counsels for the respondents have submitted that the petitioners have been the Directors or Promoter Directors. At the stage of filing of the complaint, the company was impleaded as party through its Managing Director and the Directors. Therefore, if the final order passed by the Consumer Commission is not complied with, the action can very well be initiated against the natural persons, who were manning the said post at that time. The counsel has further submitted that in case the execution procedure envisages coercive process, including prosecution and imprisonment, then, ultimately the natural persons have to be impleaded as a party. Accordingly, the petitioners were rightly brought on record at the

stage of execution proceedings. Since, the petitioners had not shown any interest in compliance of the order passed by the Commission, therefore, the Commission, as a last resort, had initiated proceedings against the individual directors for non-compliance of the order. Hence, the order passed by the Commission is perfectly legal. Qua the argument on order of moratorium, the counsel for the respondents have relied upon the judgment rendered by Hon'ble the Supreme Court in the case of ***Anjali Rathi and others Versus Today Homes & Infrastructure Pvt. Ltd., SLP (C) No.12150 of 2019, decided on 08.09.2021***, wherein Hon'ble the Supreme Court has clarified the position and liability of the Directors/Managing Directors as natural persons; as against the Corporate Debtor. Accordingly, the counsel has submitted that whatever be the proceedings pending before the NCLT, that relate to only the Corporate Debtor and accordingly the respondents may have filed the claim there, however, that does not absolve the petitioners from their liability to be prosecuted and punished as per the mandate of Section 27 of the Act. Despite moratorium imposed by the NCLT, the prosecution can very well be continued against the Director/Managing Directors, as the natural persons.

As rebuttal to the argument qua the moratorium, the counsel for the petitioners has submitted that in ***Anjali Rathi's case (supra)***, Hon'ble the Supreme Court had permitted prosecution of Directors and Managing Directors, as natural persons, only at the stage of and for the non-compliance of the settlement arrived before Hon'ble the Supreme Court in that case. Hence, the said judgment cannot be read as a precedent on the aspect.

Having heard the counsel for the parties, this Court does not find any substance in the argument raised by the counsel for the petitioners.

The factum regarding payment of the booking amount by the respondents No.2 and 3 is not in dispute. Even the order having been passed by the State Commission is not in dispute. It is also not in dispute that the execution proceedings were initiated against the Corporate Debtor in the first instance and later in the process the Directors of the company, who are the petitioners herein, were added as parties. The respondents had not responded to the notice issued by the Commission for payment of the amount as per the order passed by the State Commission. Hence, the proceedings under Section 27 of the Act were initiated by the Commission. The initiation of the proceedings under Section 27 of the Act is and in any case, can be for an independent liability for not complying with orders of the Commission, than the liability to pay the amount *per se*. Therefore, the pendency of the proceedings before the NCLT or imposition of any moratorium in the said proceedings is not to affect the aspect of prosecution of the directors of the company under Section 27 of the Act. Moreover, the liability of the Director of the company as against the liability of the Corporate Debtor, qua the criminal prosecution, have already been clarified by the judgment of Hon'ble the Supreme Court rendered in case of **Anjali Rathi (supra)**, wherein it has been so held:

“15. At this juncture, we must however clarify the right of the petitioners to move against the promoters of the first respondent Corporate Debtor, even though a moratorium has been declared under Section 14 of the IBC. In the judgment in **P.Mohanraj Vs. Shah Bros. Ispat (P) Ltd., (2021) 6 SCC 258**, a three judge Bench of this Court held that proceedings under Section 138 and 141 of the Negotiable Instruments Act, 1881 against the Corporate Debtor would be covered by the moratorium provision under Section 14

of the IBC. However, it is clarified that the moratorium was only in relation to the Corporate Debtor (as highlighted above) and not in respect of the directors/management of the Corporate Debtor, against whom proceeding could continue.”

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Hence, irrespective of the fate of the proceedings pending before the NCLT or the effect of order of moratorium qua the Corporate Debtor, the proceedings against the petitioners can very well be continued for their prosecution under Section 27 of the Act. Although the counsel for the petitioners has submitted that the judgment of Hon’ble the Supreme Court in the case of **Anjali Rathi (supra)** is not applicable in the present case because in that case the proceedings against the promoters of the Corporate Debtor were held to be permissible only for any future violation of the settlement arrived at before Hon’ble the Supreme Court, and the Hon’ble Supreme Court had declined to issue any directions in that regard because the matter was still pending adjudication before the adjudicating authority, however, this Court finds that the said observations were made by the Supreme Court in the particular facts of that case. However, so far as the legal proposition is concerned, that has been well clarified in the aforesaid paragraph 15 of the said judgment. The counsel for the petitioners has also stressed upon the fact that another SLP is still pending before the Supreme Court, however, in the opinion of this Court, once the legal proposition has been clarified by the Supreme Court in case of **Anjali Rathi (supra)**, then there is no need to keep these petitions pending anymore.

Although the counsel for the petitioners had raised another point that the petitioners were not parties before the Commission at the time

of the passing of the judgment/order of liability and they have been introduced as respondents subsequently even during the execution proceedings, therefore, they cannot be held liable for the liability as such, however, at this stage, the counsel for the petitioners has submitted that he does not wish to press this argument, rather, he would take the said defence before the State Consumer Commission, if the need be.

In view of the above, finding no merit in the present petitions, the same are dismissed.

The pending miscellaneous applications, if any, are also disposed of as such.

27th MAY, 2022
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes