

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.22278 of 2024 (O&M)

Reserved on: 05.09.2024

Pronounced on: 18.11.2024

Mange Ram Sangwan

....Petitioner

V/s

State of Haryana and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

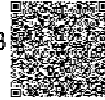
Present: Mr. Shvetanshu Goel, Advocate, for the petitioner.

Mr. Ankur Mittal, Addl. Advocate General, Haryana with
Ms. Kushaldeep Kaur, Advocate, for the respondent-State.

VIKRAM AGGARWAL, J.

1. The petitioner assails the order dated 25.04.2024 (Annexure P-10) passed by respondent No.4 (Haryana Real Estate Regulatory Authority, Panchkula), vide which a previous order dated 09.01.2024 was recalled.

2. The petitioner had preferred Complaint No.2750 of 2019 titled as *Mange Ram Sangwan vs. Alpha G. Crop. Development Pvt. Ltd.* before respondent No.4 as regards Plot No.1430, measuring 360 sq. yd. situated in Sector 29, Alpha International City, Phase-II, Karnal, which the petitioner had applied for on 11.06.2011. His grievance was that possession of the plot was not offered in accordance with the builder-buyer agreement and there had been a considerable delay. Vide order dated 28.09.2022 (Annexure P-1), the complaint was decided and a sum of Rs.1,29,87,053/- which



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included the principal and the interest was ordered to be refunded to the petitioner within a period of 90 days.

3. An execution petition (Annexure P-2) was preferred by the petitioner in February 2023. During the pendency of the execution petition, an appeal was preferred by the builder (respondent No.3) against the order dated 28.09.2022. However, the same was dismissed vide order dated 04.12.2023 (Annexure P-3) on account of non-deposit in terms of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (for short the “RERA Act”).

4. The petitioner preferred an appeal before a single Bench of this Court, which was disposed of on 15.02.2024 (Annexure P-4) giving liberty to the builder to make the requisite statutory payment and pray for revival of the appeal. In compliance of the order passed by the single Bench on 15.02.2024, the requisite amount was deposited and vide order dated 27.02.2024 (Annexure P-5), notice of the appeal was issued to the respondents therein which included the petitioner herein.

5. In the meantime, upon an application (Annexure P-6) having been moved by the petitioner, the adjudicating officer vide order dated 09.01.2024 (Annexure P-7) attached the account of the judgment debtor to the extent of decretal amount.

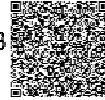
6. For the builder had deposited the amount in terms of proviso to Section 43(5) of the RERA Act, it preferred an application (Annexure P-8) for recalling the order of attachment. The application was opposed by way of a reply (Annexure P-9) but vide order dated 25.04.2024 (Annexure P-10), the order dated 09.01.2024 (Annexure P-7) was recalled, leading to the filing



7. Learned counsel for the petitioner and learned counsel representing the official respondents, who had caused appearance on advance copy having been served, were duly heard.

8. It was strenuously urged by Mr. Shvetanshu Goel, learned counsel representing the petitioner that the impugned order is completely illegal and arbitrary as there is no power of review/recalling in the RERA Act. It was urged that once there was no power of review/recalling, there was no occasion for the adjudicating officer to recall the order of attachment. To fortify his submission, learned counsel placed reliance upon:-

- i) ***M/s Godrej Sara Lee Ltd. V/s The Excise and Taxation Officer-cum-Assessing Authority & others*** (Civil Appeal No.5393 of 2010, decided on 01.02.2023);
- ii) ***Whirlpool Corporation V/s Registrar of Trade Marks, Mumbai and others***, (1998) 8 SCC 1;
- iii) ***Real Estate Regulatory Authority Chhattisgarh V/s Real Estate Appellate Tribunal and others***, decided by the High Court of Chattisgarh on 24.03.2021 in WPC No.672 of 2021;
- iv) ***Embassy Property Developments Private Limited V/s State of Karnatka and others***, (2020) 13 SCC 308;
- v) ***Mrs. Sangeeta Gupta V/s M/s Vatika Ltd.*** decided by Haryana Real Estate Regulator Authority, Gurugram on 28.03.2023 in Complaint No.1444 of 2019.
- vi) ***Deep Chand and another V/s Additional Director, Consolidation of Holdings, Punjab and another***, decided by Full Bench of this Court on 19.12.1963 in CWP No.1302 of 1961.
- vii) ***Shivani Chaurasia and another V/s State of U.P. and another***, AIR 2024 All 180;
- viii) ***Dr. (Smt.) Kuntesh Gupta V/s Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and others***, (1987) 4 SCC 525;



- ix) ***Rahul S. Shah V/s Jinendra Kumar Gandhi and others,***
(2021) 6 SCC 418 and
x) ***Vinod Kumar and another V/s M/s SRS Real***
Infrastructure Ltd. and others, decided by single Bench of this
Court on **04.08.2022 in CR-2833-2022.**

9. *Per contra*, it was submitted by learned Addl. Advocate General, Haryana, that it was not an order of review on merits and once the builder had made the pre-deposit in terms of Section 43(5) of the RERA Act, there was no occasion to continue with the order of attachment and release of the amount to the petitioner. It was submitted that there are inherent powers with the Tribunal to exercise such powers.

10. We have considered the submissions made by learned counsel for the parties.

11. The facts are admitted. After disposal of the appeal by a single Bench of this Court on 15.02.2024, the entire outstanding amount i.e. Rs.12987053/- was deposited by respondent No.3 and accordingly, notice of the appeal was issued by the Appellate Tribunal on 27.02.2024. For, the amount had been deposited, an application was moved by respondent No.3 for recalling the order of attachment, which was duly allowed on 09.01.2024. In the considered opinion of this Court, no illegality was committed by the adjudicating officer by recalling the order of attachment. The decretal amount having been deposited by respondent No.3, there was no occasion for the order of attachment to remain in operation. In fact, the effort of the petitioner to get the account of respondent No.3 attached even despite deposit of the amount as envisaged under Section 43(5) of the RERA Act is not justified and is deprecated. It cannot even be suggested that



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respondent No.3 should pay up the decretal amount and deposit it also along with the appeal. The argument is, therefore, totally devoid of merit and is rejected. In any case, if respondent No.3 fails in the appeal, the amount will be available for payment to the petitioner.

12. As regards the judgments reliance upon which has been placed by learned counsel representing the petitioner, we are of the opinion that none of the judgments would come to the aid of the petitioner. The judgments as regards powers of a writ court need no reference as the powers that can be exercised under Article 226 of the Constitution of India are wide enough to take under its sweep any kind of illegality. However, the power has to be exercised in a judicious manner and not at the mere asking of a litigant. The judgments with regard to quasi judicial authorities having no powers to recall/review their orders without there being a specific provision in this regard would also not come to the aid of the petitioner for, the order under challenge is strictly not an order of review or modification of a matter in routine but is an order of recalling attachment proceedings on account of change in circumstances. The adjudicating officer was not expected to remain a mute spectator and advise respondent No.3 to avail other remedies even after the amount having been deposited in terms of Section 43(5) of the RERA Act. This argument is, therefore, devoid of merit and is rejected.

13. In view of the aforesaid, we do not find any merit in the instant writ petition and the same is accordingly dismissed.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Reserved on: 05.09.2024

Pronounced on: 18.11.2024

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No