



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-7418-2024

Date of decision : 27.03.2025

M/s Barnala Builders and Property Consultants

... Petitioner

Versus

Sangeeta Sharma and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Gaurav Chopra, Senior Advocate with
Mr.Jatin Bansal, Advocate and
Mr.Amritpal Sandhu, Advocate
for the petitioner.

Mr.Arun Singla, Advocate
for the respondents.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India read with Section 151 CPC for setting aside the order dated 04.09.2023 (Annexure P-10) passed by the Adjudicating Officer, Real Estate Regulatory Authority, Punjab, vide which the objections of the petitioner that the decree dated 06.05.2021 (Annexure P-6) is a nullity and has no sanctity in eyes of law and hence cannot be executed, has been dismissed. Other prayers have also been made.

2. On 18.12.2024, this Court was pleased to pass the following order:-

*“Present: Mr.Gaurav Chopra, Sr. Advocate with
Mr.Jatin Bansal, Advocate and*



*Ms.Keerti Sandhu, Advocate
for the petitioner.*

*Inter alia contends that in the present case, the Adjudicating Officer, Real Estate Regulatory Authority, Punjab, vide its order dated 06.05.2021, had allowed the complaint filed by the respondents for refund of the money along with interest. It is further submitted that as an ancillary relief, an amount of Rs.1,25,000/- was also ordered to be paid on account of mental agony. It is submitted that the said order passed by the Adjudicating Officer is a nullity and is in the teeth of judgment passed by the Hon'ble Supreme Court in the case of **Newtech Promoters and Developers Private Limited Vs. State of UP and others** reported as **(2021)18 SCC 1** inasmuch as in the said judgment, the Hon'ble Supreme Court had held that the Adjudicating Officer is only competent to adjudge the compensation and for the purpose of adjudicating or grant of refund, interest and penalty, the competent authority is the Regulatory Authority and not the Adjudicating Officer. It is further submitted that the said objection was taken before the Executing Court but the Executing Court, after noticing the fact that as per the judgment of the Hon'ble Supreme Court, relief qua refund or interest was to be decided by the Regulatory Authority had further observed that since the judgment of the Hon'ble Supreme Court has been passed subsequent to the order dated 06.05.2021 thus, on account of the said judgment, order passed by the Adjudicating Officer would not automatically be nullified. It is submitted that the law laid down by the Hon'ble Supreme Court interpreting the provisions would relate back to the date of the provision/law itself unless the same is specifically stated to be prospective in the judgment itself and that in such a situation, law declared by the Hon'ble Supreme Court would be the law from the*



*beginning and in support of the said arguments, learned Senior Counsel for the petitioner has relied upon the judgment passed by the Hon'ble Supreme Court in case titled as Sarwan Kumar and another Vs. Madan Lal Aggarwal, reported as (2003)4 SCC 147 . It is further argued that the order which is a nullity cannot be executed and the issue with respect to it being nullity can be raised at any stage even during the execution proceedings and there is no question of any waiver, acquiescence to a non-est order. In support of the said arguments, learned senior counsel for the petitioner has relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Harshad Chiman lal Modi Vs. DLF Universal Limited and another** reported as (2005)7 SCC 791. It is further submitted that in the present case, the relevant rules came into force on 08.06.2017 whereas the complaint in the present case has been filed on 29.09.2017 subsequent to coming into force of the said Rules and thus, the order passed on the said complaint by the Adjudicating Officer is a nullity.*

Learned Senior Counsel for the petitioner on a pointed query raised by this Court has fairly submitted that in case the respondents were to institute the proceedings before the Regulatory Authority in accordance with the abovesaid judgment passed by the Hon'ble Supreme Court then the petitioner would not raise the plea of res judicata or the plea that the Regulatory Authority is not having jurisdiction in view of the earlier order dated 06.05.2021. It has further been fairly stated that since an amount of Rs.1,25,000/- is on account of mental agony thus, the petitioner is ready to pay the said amount and for the said purpose, the petitioner would prepare two demand drafts of the said amount in the name of respondent Nos.1 and 2 (in equal proportion) and would present the same on the next date of hearing.

Notice of motion for 28.01.2025.



Recovery certificate is stayed till the next date of hearing.

To be listed in the urgent list.

The petitioner as undertaken would get the two demand drafts totalling Rs.1,25,000/- prepared in the name of respondent Nos.1 and 2 (in equal proportion) on the next date of hearing. In case the said demand drafts are not produced on the next date of hearing then the present interim order shall be liable to be vacated.

18.12.2024”

3. Learned senior counsel for the petitioner has submitted that in pursuance of the abovesaid order, two demand drafts of total amounting to Rs.1,25,000/- have been handed over to learned counsel for the respondents, which fact has been reaffirmed by the learned counsel for the respondents.

4. Learned counsel for the respondents has submitted that in case the impugned orders are to be set aside by granting liberty to the respondents to institute proceeding before the Regulatory Authority, then the petitioner be bound by the statement made before this Court that they would not object to the said proceeding on the plea of res judicata or the plea that the Regulatory Authority does not have jurisdiction in view of the earlier order dated 06.05.2021. It is further submitted that the petitioner be also estopped from raising the objection of limitation in case any such new complaint is filed by the respondents.

5. Learned senior counsel for the petitioner has fairly submitted that in case any such complaint is filed, then they would not raise the plea of limitation also.

6. Keeping in view the above said facts and circumstances and the



fair stand taken on behalf of the learned senior counsel for the petitioner as well as learned counsel for the respondents, the present petition is partly allowed with the following directions/observations:-

- i) The impugned order dated 04.09.2023 (Annexure P-10), order dated 09.05.2024 (Annexure P-16), order dated 30.10.2023 (Annexure P-11) and the recovery certificate dated 14.11.2023 (Annexure P-12) are set aside.
- ii) The respondents would be entitled to encash the two demand drafts totalling Rs.1,25,000/-.
- iii) It would be open to the respondents to institute fresh proceeding before the Regulatory Authority in accordance with the judgment of the Hon’ble Supreme Court of India in the case of *Newtech Promoters and Developers Private Limited (supra)* and in case any such proceedings are instituted, the present petitioner would not raise the plea of res judicata or the plea of limitation and the Regulatory Authority would decide the said proceeding on merits, independently, in accordance with law, without being influenced of the observations in the earlier order dated 06.05.2021 and after hearing all the parties concerned, as expeditiously as possible.

(VIKAS BAHL)
JUDGE

March 27, 2025.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No