

REAL ESTATE REGULATORY AUTHORITY, BIHAR
Before the Bench of Mr. Ved Prakash, Senior Legal Consultant

Exe. Case No - 41/2022

RERA/CC/101/2021

Ms. Garima Kumari

....Executant(s)

Vs.

M/s Anshul Homes Pvt. Ltd.

....Respondent

PROJECT :Mannat Enclave

For the complainant :

Shri Dheeraj Rai (Advocate)

For the respondent :

Shri Jayant Kisto (Advocate)

ORDER

13/02/2023

The Executant, Ms. Garima Kumari has filed the present Execution case against the Respondents M/s Anshul Homes Pvt. Ltd and it's Directors, Shri Rahul Kumar and Shri Vinod Kumar Singh against non-compliance of order dated 08/09.10.2021 passed by the Hon'ble Authority in RERA/CC/101/2021, whereby and where under the Respondents were directed to make payment of interest @ 16.75% on the paid principal amount since the date of payment till the date of refund.

(2) Learned counsel for Executant submits that the Hon'ble Authority has passed the said order making direction to the directors to refund the principal amount Rs. 12,00,000/- to the complainant along with interest at the rate of Marginal cost of fund

based on lending rate (MCLR) of State Bank of India as applicable for three years plus 2 % from the date of taking payment within 60 days of the issue of the order.

(3) He further submits that the Respondents have refunded only the principal amount of Rs. 12,00,000/- , but have failed to comply with the order in true spirit by paying the interest amount to the Executant, who is suffering a huge loss. He further submits that since the Respondents have not complied with the order passed by the Hon'ble Authority in its letter and spirit, the complainant has filed the present execution case against the Respondents. He further submits that the respondents have taken the principal amount in between 08.09.2014 to 13.10.2014 when the prevalent lending rate of interest in SBI was 14.75 %, and as per order of the Authority, if 2% is added, it becomes 16.75%, but the Respondents have failed to pay interest to the Executant @ 16.75 % on the principal amount.

(4) Learned counsel for Executant further submits that the proviso of section 17 of Bihar RERA Rules, 2017 says that in case the SBI MCLR is not in use, it will be replaced by such bench-mark lending rate which the SBI may fix from time to time for lending to the general public. It shows that during the said period of payment of principal amount, the MCLR was not in use, hence the interest should be calculated on the basis of bench-mark lending rate, which has been notified vide **RBI/DBR/2015-16/20 Master Direction DBR Director No. 85/13.03.00/2015-16 March**

03,2016. therefore, prior to 01.04.2016, the interest has to be calculated on the basis of bench-mark lending rate in view of proviso of Rule 17 of Bihar RERA rules, 2017. He further submits that the MCLR came into effect from 04.04.2016, which can be verified from the official web-site of SBI. He further submits that the complainant has sent the calculation sheet with respect to the payment of interest through mail to the Respondent company and requested to make payment at the rate of 16.75% since due date, which is the year 2014, but they have failed to do so and not complied with the order of the Hon'ble Authority. He further submits that the Respondents may be directed to make payment of interest on the principal amount @ 16.75%.

(5) On the other hand, Learned counsel for Respondents has not filed counter reply to the petition of the Executant/Executant, but he opposes the submission of complainant and submits that the Hon'ble Authority has directed the Respondents to pay interest at the rate of MCLR of SBI as applicable for three years plus 2 % on the principal amount of Rs. 12,00,000/- from the date of taking payment within 60 days of issue of the order, which the Respondents are ready to pay to the Executant, but the Executant is repeatedly hammering for payment of interest at the rate of 14.75% on the principal amount plus 2 % from the date of taking payment by the Respondents, which is neither the spirit of the order nor applicable in the present case.

(6) After hearing the submissions of the rival parties on execution petition, the following points may be formulated to adjudicate the execution case of the Executant;

- (i) Whether the Executant is entitled to get interest at the rate of MCLR of SBI, applicable for three years plus 2 % prevalent on the date of order for payment from the date of taking of payment by the Respondent till the date of refund?
- (ii) Whether the Executant is entitled to take interest at the rate of bench-mark lending rate prevalent at the time of payment of principal amount plus 2 % from the date of payment till the date of refund?

(7) Both the issues being inter-related are taken up together for discussion. The Hon'ble Authority has issued direction to the Respondents to refund the principal amount Rs. 12,00,000/- to the complainant together with interest at the rate of MCLR of SBI, as applicable for three years plus 2 % from the date of taking of payment, within 60 days of the issue of order. Admittedly, the Respondents have refunded the principal amount Rs. 12,00,000/- to the complainant. Now the Respondents have to pay the interest to the complainant as per order dated 08/09.10.2021 of the Hon'ble Authority.

(8) The complainant has paid Rs. 25,000/- on 08.09.2014, Rs. 10,00,000/- on 22.09.2014 and finally Rs. 1,75,000/- on 17.10.2014, total Rs. 12,00,000/- to the Respondents. Learned

counsel for Executant submits that in the year 2014, MCLR of SBI was not in existence, hence the bench mark lending rate of SBI, as per proviso of Rule 17 of the Bihar RERA Rules, 2017 may be allowed to be implemented in the present case. He further submits that the bench-mark lending rate of SBI in September, 2014 was 14.75 % and as per order of the Hon'ble Authority, after 2 % is added to that, it will be 16.75%, and interest has to be calculated from the date of payment till the date of refund of the principal amount of Rs. 12,00,000/-. Learned counsel for Respondents has strong objection to this method of calculation and submits that there is no such order passed by the Hon'ble Authority. So the bench-mark lending rate cannot be applied in the present case.

(9) The term 'execution' has not been defined in the code. The execution means enforcement or implementation or giving effect to the order or judgment passed by a court of justice. A decree or order will come into existence where civil litigation has ended with judgment. The executing court cannot travel beyond the order or decree under execution. It gets jurisdiction only to adjudicate the order in accordance with procedure laid down under order 21 of CPC. The Hon'ble Supreme Court in Rameshwar Das Gupta vs. State of U.P and Another (1996) 5 SCC 728 has held that "*the executing court cannot go behind the decree. The executing court has to take order or decree as it stands and has to execute it according to its terms. It is beyond its jurisdiction to question its legality or correctness.*"

(10) In this way, it appears that there is no direction passed by the Hon'ble Authority to implement bench-mark lending rate of SBI for payment of interest on the principal amount in place of MCLR of SBI. There is also no direction to allow the rate of interest prevalent on the date of payment by the complainant to the Respondents. If such order would have been passed, there should have been a clear-cut direction by the Hon'ble Authority. In absence of any direction for allowing benchmark lending rate in place of MCLR of SBI and allowing the rate of interest prevalent on the date of payment by complainant to the Respondents will be unreasonable and it will defeat the ends of justice. I think the Hon'ble Authority has allowed interest rate of MCLR of SBI prevalent on the date of order i.e. 08/09.10.2021, so this bench is bound to calculate the interest at the rate of MCLR of SBI applicable for three years plus 2 % prevalent on the date of order. The MCLR of SBI for three years was 7.3% on 08/09.10.2021 and after 2% is added to that, it will become 9.3 %. Therefore, on calculation, the total interest to be paid by the Respondents to the complainant on Principal amount Rs.12,00,000/- comes Rs. 8,03,463/-

(11) In view of the overall consideration of the facts of the case and the existing rules on the subject and also in terms of the order of the Hon'ble Authority in RERA/CC/101/2021, the Respondents are directed to pay interest Rs. 8,03,463/ to the complainant-, as aforesaid, within 15 days, failing which coercive step shall be taken against them.

In terms of the above direction, the Execution Case no. 41/2022 arising out of RERA/CC/101/2021 stands disposed of accordingly.

Sd/-

(Ved Prakash)
Senior Legal Consultant
RERA , Bihar
13.02.2023