

THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL

AT

LUCKNOW.

EA-1946/2022

IN

Appeal No. 31 OF 2021

Ajay Pratap Singh **Appellant.**

Vs.

Agrani Homes Pvt.Ltd. **Respondent.**

Hon'ble Mr. Justice (Dr.) D.K. Arora, Chairman.

Hon'ble Mr. Sanjai Khare, Judicial Member.

1. Execution Application No.1946/2022 (Appeal No.31/2021) and other execution applications against the same judgment debtor M/s. Agrani Homes Ltd. relating to the same Scheme have been filed before the Tribunal to execute the judgment/order of the Tribunal dated 27.10.2021, passed on the basis of compromise/settlement deed of parties. These Execution Applications (EA) were consolidated by the orders dated 30.09.2022 and 09.11.2022 of Bench No.2 of the Tribunal. E.A.No.1946/02 (Appeal No.31/2021) was made leading case.
2. Brief facts of the case are that appellant got allotment of one unit each in the respondent's (Agrani Homes Pvt. Ltd.), IOB Nagar, Varanasi Scheme. Appellant paid agreed amount for each unit to respondent. When respondent failed to deliver possession of the allotted unit, appellants filed separate complaints before Real Estate Regulatory Authority (RERA) under section 31 of RERA Act 2016.

RERA passed judgment in these complaint allowing refund of deposited money to every allottee. Compensation and interest was not allowed as per Section 18 of RERA Act 2016. Few allottees/complainants preferred separate appeals before UP REAT against the judgment of RERA. During the pendency of appeals, parties settled the dispute on the basis of

compromise. Tribunal decided appeals on the basis of compromise by order dated 27.10.2021 wherein Promoter/Respondent/Judgment Debtor agreed to pay principal amount along with interest @ MCLR +1% on the amount deposited by the respective allottees in the period of 16 months starting from 17.10.2021 to January 2023.

3. The relevant para 4&5 of the settlement agreement are being extracted as under:-

“4. That UPRERA, Bench -1, formed a monitoring committee vide order dated: 09.06.2021 and since then the entire process of sales realization from the properties and refund to the allottees of IOB Nagar project is being supervised and monitored by the Monitoring Committee . The progress under the present settlement deed shall be continued to be periodically monitored by the Existing monitoring committee constituted by UPRERA. It is further agreed by all the concerned parties that the entire realization of money through sale proceeds of assets/properties and refund to the complainant/appellants shall be done through the previously agreed, and also in record of UPRERA Bench, Bank account opened by the builder with the Indian Overseas Bank, Gomti nagar Branch, bearing account number 142202000000641 and refund shall be paid in accordance with the terms of the present agreement.

5. *That both the parties have amicably agreed to get the dispute pertaining to the above mentioned appeals on following terms and conditions:-*

- i. That the Appellant is a member of IOBians Mitra Kalyan Samiti (IMKS), a registered association of RERA complainants/appellants associated with IOB Nagar, Varanasi project, currently represented by a monitoring committee duly constituted by UP RERA Bench as per their order dated 09.06.2021.*
- ii. That the parties have agreed that the opposite party will pay an interest at the rate of SBI MCLR+1% (as applicable from time to time) simple interest from the date of deposit to the date of refund of the principal amount on the principal amount deposited by the Appellant.*
- iii. That the parties have agreed that in respect of service tax paid to the builder, if he submits the proof of remittance of service tax to the concerned government dept., then the appellant/ appellants shall*

forego their claim for service tax. This proof shall have to be submitted by the opposite party to RERA with a copy to the monitoring committee.

iv. *That the parties have agreed for the below mentioned refund schedule:-*

- a. *The entire Principal amount shall be paid by the builder (opposite party) to the complainants/ appellants of IOB Nagar, Varanasi on or before September 2022 in four lots. First 25% complainants/ appellants shall be paid by December 2021, next 25% complainants/ appellants by March 2022, next 25% complainants/ appellants by June 2022 and balance 25% complainants/appellants shall be paid by September 2022 as per the chronological order passed by UP RERA.*
- b. *After payment of principal amount, the builder (opposite party) shall pay the interest, as agreed above, in next four months i.e. From October 2022 to January 2023.*

Therefore, the entire principal plus interest shall have to be paid by the builder (opposite party) in the period of 16 months from today to January 2023. Any default/ delay in adhering to the aforesaid refund schedule by the builder (opposite party) shall tantamount to a breach of this settlement deed, and in that case the appellant has the right to proceed for execution of the decree passed by the UPREAT in the present case. That the Appellant undertakes that he shall not proceed with the execution before 31st January, 2022.

- v. *IOB Nagar, Varanasi's complainants/ appellants will help the promoter to regain his goodwill back by stating the facts and the positive developments and will abstain from spreading any fact that may further tarnish the image of the Promoter.*
- vi. *The present settlement Agreement settles almost all the disputes between both the parties, therefore, the complainants/appellants will not have any objections if, the same will be brought to the knowledge of the public at large through print and electronic media so that builder (opposite party) regains his goodwill and this will further facilitate in process of refund.*
- vii. *That builder's (opposite party) has ongoing RERA registered projects Corporate Heaven and R-1 at Arazi No. 401 and 402 of Mauja Kesharipur. These two projects will be developed and sold by the builder. Thirty percent (30%) of the sale realization from these two projects shall be utilized for refund of Complainants/Appellants of IOB Nagar, Varanasi. Eighty percent (80%) out of the total thirty percent (30%) of the sale realization shall be exclusively utilized for refund to the members of IOBians Mitra Kalyan Samiti (IMKS) and remaining twenty percent (20%) of the above thirty percent will be utilized for other allottees/complainants related to Powergrid project and others. The aggregate valuation and aggregate liabilities with regard to refund of Complainants/Appellants has to be matched accordingly.*

viii. *All Lands/Assets/Properties in the name of Agrani Homes Pvt. Ltd. situated in Uttar Pradesh as on date other than Arazi No. 401 and 402 Mauja Kesharipur, Varanasi shall be sold by the builder with the concurrence of the Monitoring Committee and UPRERA and the sale proceeds shall be fully utilized for refund to the complainants/Appellants who are members of IOBians Mitra Kalyan Samiti (IMKS) and others in a ratio of 75% of sale realization shall be utilized for the refund to the IOBians Mitra Kalyan Samiti (IMKS) and 25% of sale realization will be utilized for the purpose of refund to other complainants/appellants of Powergrid and IOB Nagar and for company's miscellaneous expenses/salaries."*

4. These appeals were disposed off vide order dated 27.10.2021 in the following terms:-

"Both the parties have decided to sink their dispute and for the purpose they have moved settlement deed.

The terms and conditions of settlement deed read-over in the open court before the parties.

The suit is decided in terms of settlement deed which shall form part of this order.

Accordingly, this defective appeal is disposed of finally.

Let the file be consigned to the record room."

5. When the judgment debtor/respondent Agrani Homes Pvt.Ltd. failed to comply the orders of the Tribunal various execution applications were filed before the Tribunal.

In the meantime, certain other allottees of the project approached the UP RERA, the Regulatory Authority passed the order of refund and in some cases refund alongwith interest on different dates. The Regulatory Authority initiated execution proceedings and also issued recovery citations against the promoter/respondent/judgment debtor on account of non-compliance of the said order.

6. On 07.07.2022, the Bench no. 2 of the Tribunal initiated recovery proceedings against the judgment debtor and required the execution applicant to take steps within a week. During the course of hearing on 16.08.2022, the learned counsel for the judgment debtor requested to recall the order dated 07.07.2022 and submitted that there are few cases listed

before the Tribunal today in which recovery proceedings have been issued by the learned Regulatory Authority and also there are few cases wherein properties of the builder/developer-company have been attached by the concerned Recovery Officer in pursuance of recovery citation issued by learned Regulatory Authority and emphasized that it will be unjust and unfair, if multiple recovery proceedings are initiated against the judgment debtor as all the matters are against the same judgment debtor/builder/developer-company and also emphasized that by initiating multiple recovery proceedings there are chances of distress sale of the assets of the builder/developer-company and *ad hoc* distribution of recovered amount in favour of the few decree holders. The Director of builder/developer-company Sri Alok Kumar also stated that in case of distress sale the realized amount will not be sufficient to pay all the decree holders. If assets of the builder/developer-company are sold in planned manner the amount may be paid to all the decree holders and requested to pass appropriate orders by the Tribunal, considering the situation of multiple recovery proceedings against the builder/developer-company. Shri Ajay Singh, who was representing the bunch of decree holders submitted that builder/developer-company has not come with clean hands and even after passing sufficient time after settlement before the Hon'ble Tribunal the builder/developer-company has failed to pay the decree holders and stressed that the amount should be recovered and disbursed amongst decree holders in planned manner. The amount realized through recovery should not be paid only to few decree holders. It was also submitted that an Escrow Account No. 142202000000641 of Indian Overseas Bank, IFSC Code- IOB0001422 at Gomti Nagar Branch, Lucknow has already been opened in pursuance to RERA's order. After considering the facts and circumstances of the case, the Bench no. 2 passed the following order on 16.08.2022:-

“Heard counsels for both the parties and after considering the facts and circumstances of the case, the judgment debtor is directed to submit statement of affairs regarding all the assets and liabilities of the company. The judgment debtor is also directed to disclose the assets as well as the full details of properties (including complete address and their estimated realizable value) whether shown as current assets or fixed assets and the details of liabilities alongwith names and address of creditors and buyers. The amount collected from buyers shall be shown separately.

In the meantime, the judgment debtor will not dispose any property and any amount realized from the property sold by the judgment debtor or by any Recovery Officer, shall be deposited in the Escrow Account No. 142202000000641 of Indian Overseas Bank, IFSC Code- IOB0001422 at Gomti Nagar Branch, Lucknow (opened earlier in pursuance of RERA order). The amount so collected shall not be disbursed till further order. It is further directed that amount recovered by way of recovery citation issued by this Tribunal or by the Regulatory Authority will also be deposited in the said Escrow account. The mode of disbursement of the amount from the said Escrow account shall be decided after submission of necessary details by the builder/developer-company and verification of the same.

Copy of this order must be produced before the bank concerned by the decree holder as well as judgment debtor.”

In compliance to order dated 16.08.2022, the judgment debtor filed statement of affairs of the assets and liabilities as on 27.02.2022 on 29.08.2022 and claimed that estimated value of assets is Rs. 87 Crores against the liability of Rs. 45.49 Crore, the judgment debtor also claimed that the realizable value of the assets of the company are sufficient to pay all the liabilities.

The Bench no. 2 of Tribunal vide order dated 30.08.2022 appreciating the countervailing arguments of the counsel for the decree holder and the counsel for the judgment debtor and taking into consideration the recovery certificates have already been issued by the learned Regulatory Authority, directed the parties to submit a detail of complaint-wise status of the recovery certificate, before the date of listing of the case and further appreciating the fact that the matters are likely to be settled finally between the parties and the amount collected through recovery proceedings be disbursed amongst all the decree holders in fair manner directed District Magistrate, Varanasi/ any other Recovery Officer not to dispose off the properties of the builder company i.e. M/s. Agrani Homes Pvt. Ltd. in the meantime otherwise the purpose of settlement/recovery would be frustrated.

7. The Bench No. 2 of the Tribunal, vide order dated 30.09.2022, while considering that the facts of all RA and EA against Agrani Homes Pvt.Ltd. relating to same scheme and properties of promoter were of similar nature, consolidated all RA and EA for convenience and RA No. 3063 of 2022 in Appeal No. 31 of 2021 was made lead case.

8. On 11.10.2022, it was brought to the notice that certain properties situated within territory of District Varanasi have been attached by the District Magistrate, Varanasi. Counsel for both the parties further submitted that the seized properties be released for execution of sale transactions and depositing the amount of sale consideration into Escrow Account No. 142202000000641 of Indian Overseas Bank, IFSC Code- IOB0001422 at Gomti Nagar Branch, Lucknow. Both the counsels agreed on the point that a committee must be formed for monitoring the proceeding of sale transactions as well as to ensure that the realised amount would be deposited in Escrow Account. The Bench No. 2 allowed the sale of properties having details with the conditions as follows :-

Sl. No.	Properties	Value as per Government Circle Rate
1	Minzumla of Arazi Nos. 513, 514, 522, 523, 518, 524, 515, 516, 526, 518 at Bachhaw, Varanasi	930/- per sq. ft. 20552 x 930= 1,91,13,360/-
2	Arazi No. 530 & Arazi No. 531 Mauza-Bachhaw, Pargana Kaswar Raza, Tehsil-Raja Talaab, Varanasi	930/- per sq. ft. 17533 x 930= 1,63,05,690/-
3	Arazi No. 398, Kesaripur, Varanasi	15,000/- per sq. ft. 15000 x 5762= 80,47,486/-
4	Arazi No. 418, Kesaripur, Varanasi	15,000/- per sq. ft. 15000 x 331.84= 49,77,600/-

- (i) The properties cannot be sold below the value given in the IA No. 3730/2022 dated 29.09.2022.
- (ii) The properties to be sold under supervision of a committee to be constituted by the Tribunal and Sri Ajay Singh (Aadhar No. 9984 7698 9978) & Sri Piyush Kumar Singh (Aadhar No. 2436 4222 7667) also to be witness to the sale deed/agreements and ensure that amount realised is deposited in the concerned Escrow Account.
- (iii) 50% amount should be realised within 01 month from the date of agreement and balance 50% within 02 months from the date of agreement. The agreement for sale to be confirmed by the committee to be constituted by the Tribunal for supervision. Meanwhile

judgment debtor may prepare draft agreement to sale and present it before next date of listing.

- (iv) The DD/Cheques of sale consideration should be deposited only in Escrow Account concerned.

Further, taking the interest of the decree holders, the District Magistrate, Varanasi was directed to release the attached properties mentioned in this order to satisfy the interest of the decree holders as per conditions mentioned in the order.

The record also reveals that the counsel for the decree holder moved an application to form a committee in the light of order dated 11.10.2022 and suggested certain names. The bench no. 2 nominated a committee vide order dated 18.10.2022.

Representative of decree holders	1. Sri Yogaish Chand Jain
	2. Sri Arvind Shukla
Representative of judgment debtor	1. Sri Alok Kumar
	2. Sri Rana Ranbeer Singh

“Sri Yogaish Chand Jain is appointed because he held the position of GM and CFO in Indian Overseas Bank and also a qualified Company Resolution Professional, therefore most experienced in the field of recovery amongst the names suggested by decree holder.

Sri Arvind Shukla is appointed because he is representing day to day case of the complaint and well versed with legal profession.

One person to be nominated by the Chairman, RERA and one person to be nominated by District Magistrate, Varanasi. The Committee shall execute the recovery proceedings as per direction of the Tribunal. No fee shall be payable to the Members of the Committee.”

The record further reveals that vide application dated 01.11.2022, the decree holder prayed as under:-

- (i) *Sri Ajay Singh be included in the committee formed by U.P. REAT vide order dated 18.10.2022 in place of Sri Arvind Kumar Shukla;*
- (ii) *Kindly define committee’s objectives, specific roles, duties and scope of functions;*
- (iii) *To change the members from the respondent’s side as “Mr. Alok Kumar and/or Mr. Rana Ranvir Singh”.*

(iv) *To define the schedule and mode of meetings of the said committee.*

And while consolidating all the 225 execution proceedings, the bench no. 2 passed the following orders on 09.11.2022 :-

“Counsel for the decree holder is directed to upload the application dated 01.11.2022 on the ePortal of U.P. REAT during the course of the day.

Prayer No. (i) of the application is allowed. Accordingly, the name of Sri Ajay Singh be included in the committee for Supervision of Recovery which has been formed vide order dated 18.10.2022, in place of Sri Arvind Kumar Shukla.

With respect to Prayer No. (iii) the request should have been made by the judgment debtor not by the decree holder regarding appointment of representative from the side of judgment debtor.

With respect to Prayer No. (ii) & (iv) the roles and duties of the committee for Supervision of Recovery proceeding shall be as follows :-

- (i) To recover the amount from the judgment debtor and pay to the decree holders on proportionate basis.*
- (ii) To expedite the recovery proceedings and to maximise the recovery from the judgment debtor through sale/arrangement of its assets.*
- (iii) The specific roles, duties and scope of functions, schedule and mode of meetings etc. may be proposed by the committee after its first meeting.*

Counsel for the decree holder further submitted that the amount recovered by U.P. RERA has not been credited to the Escrow Account No. 142202000000641 of Indian Overseas Bank, IFSC Code- IOB0001422 at Gomti Nagar Branch, Lucknow as directed by this Tribunal vide its order dated 16.08.2022 and 23.09.2022.

Registry is directed to collect the reports as to compliance of order dated 16.08.2022 and 23.09.2022 (passed by this Tribunal) from U.P. RERA and District Magistrate, Varanasi. The reports be submitted before the next date of listing.

In the application dated 01.11.2022 which has been moved by decree holder in its para-2 (e) it has been mentioned that “A copy of the order REAT order dated 18.10.2022, the order with amendment be marked to all the stake holders for smooth and prompt compliance of the tribunal order.”

The Chairman, Regulatory Authority and District Magistrate, Varanasi are directed to appoint their respective nominees as members of the Committee for recovery mentioned in order dated 18.10.2022.

Counsel for the judgment debtor has also submitted that the endorsement from revenue record regarding attachment of the properties be removed. Judgment debtor is directed to file proper application in this regard.

Judgment debtor is also directed to file draft agreement for sale and take necessary approvals from the Committee formed for supervising the recovery proceedings on draft agreement.

The information of order of the Tribunal be sent to the U.P. RERA and District Magistrate, Varanasi for information and necessary action in the matter whenever it is needed.”

9. The judgment debtor has moved contempt application dated 18.11.2022 and submitted that judgment debtor has already deposited Rs. 1,45,89,160/- in Escrow Account, opened for distribution and refund to the flat buyers/complainants-appellants and prayed for stay and auction of properties by local Administration at Varanasi and to stop the auction as per direction by the Tribunal dated 11.10.2022 and 18.10.2022. In the said application, the respondent submitted regarding non-compliance of the order by the District Magistrate, Varanasi and UP RERA and taking note of the submissions of learned counsels for the parties to the effect that order dated 30.08.2022 is already in the knowledge of District Magistrate, Varanasi and in spite of that the properties as mentioned in the order dated 11.10.2022 are being auctioned by the District Magistrate, Varanasi/Recovery Officer on 22.11.2022.

The Bench No. 2 after hearing counsel for the parties, passed the following orders on 19.11.2022:-

“Counsels for both the parties submitted that order dated 30.08.2022 is already in the knowledge of the District Magistrate, Varanasi, and to this effect copy of the orders dated 11.10.2022 & 18.10.2022 have already been sent to the District Magistrate, Varanasi. In spite of that if the properties as mentioned in the order dated 11.10.2022 are being auctioned by the District Magistrate, Varanasi/ Recovery Officer on 22.11.2022, it is very astonishing and it would be against the order passed by the U.P. Real Estate Appellate Tribunal, Lucknow which amounts to contempt of the Court.

As per order dated 30.08.2022, “the District Magistrate, Varanasi/any other Recovery Officer is directed not to dispose the properties of the builder-company i.e. M/s. Agrani Homes Pvt. Ltd. otherwise the purpose of settlement/recovery will be frustrated”.

District Magistrate, Varanasi/any other Recovery Officer is directed to stop the auction proceeding to be held on 22.11.2022 relating to the properties of M/s. Agrani Homes Pvt. Ltd. till further order.”

10. Hon’ble High Court passed following order in Writ C No. 572 of 2023 (Akhand Pratap Singh Vs. State of UP & Ors) on 08.02.2023 :-

“.....4. From perusal of the order dated 19.11.2022 passed by the Tribunal, it appears that some private person/allottee had

filed an appeal against some order passed by U.P. RERA in favour of M/S Agrani Homes Pvt. Ltd. M/S Agrani Homes Pvt. Ltd. was not the appellant, it was the Judgment Debtor and in the said appeal of a private person, an application was moved by the Judgment Debtor on 18.11.2022 for staying of auction proceedings of properties held by the Judgment Debtor by the local administration of Neutral Citation No. - 2023:AHC-LKO:11101-DB Varanasi, and for a direction to the District Magistrate to comply with earlier orders passed by the Appellate Tribunal dated 11.10.2022 & 18.10.2022 by which the Tribunal had allowed the Judgment Debtor to liquidate its own properties and comply with the recovery certificate/citations. The Judgment debtor-M/S Agrani Homes Pvt. Ltd. had argued before the Appellate Tribunal that despite orders passed by it on 11.10.2022 & 18.10.2022 being in the knowledge of the District Magistrate, Varanasi, he was proceeding to hold auction of the properties of the Judgment debtor. The Appellate Tribunal noted its own order dated 30.08.2022 by which the District Magistrate, Varanasi had been directed not to dispose of the properties of the builder Company otherwise the purpose of settlement/recovery would be frustrated, and has passed an order stopping auction due to be held on 22.11.2022 relating to properties of M/S Agrani Homes Pvt. Ltd. till further orders.

5. This Court fails to understand the logic behind the order dated 19.11.2022. A private person/allottee had approached the Tribunal against some orders passed by the U.P. RERA in favour of the Builder. The Builder being the Judgment Debtor in other cases had filed an application in the appeal of the private person/allottee and an interim relief has been granted by the appellate Tribunal to the Judgment debtor, which is all encompassing in nature and stops recovery proceedings initiated by the District Administration, Varanasi against the Builder without any appeal being filed by the Builder against orders passed by the U.P. RERA in individual cases where 300 recovery citations are pending against such Builder.

6. *This Court has taken Suo Moto notice of the order dated 19.11.2022.*

7. *It has been informed by learned counsel for the U.P. RERA that Sri T.B. Singh, Judicial Member has already retired. The petitioner is directed to implead M/S Agrani Homes Pvt. Ltd. and the U.P. Real Estate Appellate Tribunal through its Registrar as respondent in this case within a period of one week.*

8. *The Office shall issue notices bothways to M/S Agrani Homes Pvt. Ltd. and to U.P. Real Estate Appellate Tribunal.*

9. *The petitioner shall serve notice and file affidavit of service by the next date of listing.*

10. *It is within the knowledge of this Court that the appellate Tribunal is completely paper less which has no paper books/order-sheets maintained as hard copies. Therefore, a direction is issued to the Registrar of the Appellate Tribunal to send the record of Appeal No. 31/2021 by getting it transcribed on a C.D. to this Court.*

11. *List this case on 13.03.2023 by which date, the State respondents as well as newly impleaded respondents shall file their responses.*

12. *Till the next date of listing, the U.P. Real Estate Appellate Tribunal shall not proceed with the hearing of Appeal No. 31/2021 (Ajay Pratap Singh vs. M/S Agrani Homes Pvt. Ltd.).....”*

11. During the proceedings on 20.02.2023, this Tribunal passed following order :-

“ On the basis of the issue as placed before us by the learned counsel for the parties and the fact that about 225 Execution Cases are pending before the Tribunal and about 336 Recovery Certificates were issued by the Regulatory Authority against the respondent for recovery of money deposited by the allottees for the project in question of the promoter/respondent, in our considered view the basic issues are:-

- (i) Whether the Tribunal was required to only process the execution proceedings in pursuance to its order dated 27.10.2021 and subsequent similar orders passed on the basis of compromise/settlement between the parties?
- (ii) Whether the Tribunal, as per the powers conferred upon it under section 40(1) and rule 23, had to restrict itself only to the issuing of the recovery certificates which would then have to be executed by the Collector as per the powers conferred under U.P. Revenue Code, 2006 and whether any interference by the Tribunal by way of a monitoring committee amounts to encroachment on lawful functioning of the Collector and other revenue authorities?
- (iii) Whether it was appropriate for the Tribunal to undertake monitoring with respect to all the 225 Execution matters, although it had not issued recovery certificates in many of these cases and whether it was lawful for the Tribunal to extend the scope of the monitoring committee even to the cases wherein the concerned complainant-allottees had not filed appeal before it against the order of the Regulatory Authority and were instead pressing for execution before the Regulatory Authority and whether restraining the auction proceedings with respect to such cases vide orders dated 30.08.2022, 18.10.2022 and 19.11.2022 did not amount to the Tribunal assuming extra-legal jurisdiction unto itself?
- (iv) Whether it could have been appropriate for the Tribunal to transfer/refer the execution proceedings to the Regulatory Authority taking in view the fact that RERA had already issued recovery certificates against the promoter with respect to some of the complainants and to avoid the possibility of dual proceedings in some of the cases, albeit inadvertently?
- (v) Whether the orders dated 30.08.2022, 18.10.2022 and 19.11.2022 are liable to be recalled suo moto in view of relevant provisions of the RERA Act, U.P. RERA Rules and the U.P. Revenue Code and to maintain judicial propriety?

The Hon'ble High Court restrained this Tribunal from proceeding with the hearing of execution application filed in Appeal No. 31/2021 (Ajay Pratap Singh Vs. M/s Agrani Homes Pvt. Ltd.) and the record of the same has also been summoned. In all the execution applications the issue is same, property and project in question is also same, therefore, it will not be proper for us to pass further orders in other execution applications, but at the same time we deem it proper to issue notice to UP RERA to know the factual aspect of the recovery initiated by them, specially recovery in pursuance to the orders passed by the Regulatory Authority in the complaints other than the complaints in which appeal filed and disposed of by the Tribunal in terms of compromise between the parties, as well as for assistance on the issue. ”

12. The Hon'ble High Court on 31.05.2023 in bunch of Writ Petitions (leading being Writ C. 572 of 2023) passed the following order directing that the order dated 20.02.2023 impugned in the Writ Petition will not come in the

way of execution of recovery certificates, issued by RERA nor in execution of such recovery certificates by the Revenue Authorities, except of course, in Appeal No 31/2021 (Ajay Pratap Singh Vs Agrani Homes Pvt. Ltd), meaning thereby in other cases, the orders impugned shall not be a bar in issuance of execution of recovery certificates.

13. Hon'ble High Court took the cognizance of above five issues, framed by the Tribunal on 20.02.2023 in present Appeal No. 31/2021 but on these issues, the Tribunal could not hear and pass the order due to the stay of proceedings of Appeal No. 31/2021 by Hon'ble Court's order dated 08.02.2023. Hon'ble High Court passed following orders on 31.05.2023 in Writ C No. 572/2023:-

"...Counsel for the Real Estate Appellate Tribunal informs the Court that in fact the appellate authority had taken cognizance of stay of all recovery certificates pertaining to Ms. Agrani Homes Private Limited in one appeal and accordingly took cognizance of the matter in Execution Application No. 1946/2022 arising out of Appeal No. 31/2021 (Ajay Pratap Singh vs. Agrani Homes Pvt. Ltd.) and taking note of the aforesaid orders of the High Court and the order impugned passed by the Appellate Authority had framed certain questions vide its order dated 20.02.2023

Submission of counsel for RERA is that in view of the stay of the proceedings, Real Estate Appellate Tribunal is not able to proceed for considering the questions framed by it. In view of the above, we modify our earlier orders quoted hereinabove with liberty to the Real Estate Appellate Tribunal to proceed and consider the questions framed by it in its order dated 20.02.2023 and itself rectify the error committed, if it is so and also inform the Court about it, if possible by the next date.

We further provide that the orders impugned in these bunch of petitions will not come in the way of execution of recovery certificates issued by the RERA nor in execution of such recovery certificates by the revenue authorities, except of course, in Appeal No. 31/2021 (Ajay Pratap Singh vs. Agrani Homes Pvt. Ltd.), meaning thereby in other cases, the orders impugned shall not be a bar in issuance or execution of recovery certificate...."

14. In compliance of the order passed by Hon'ble High Court on 31.05.2023 in Writ C No. 572/2023, Bench of the Tribunal directed the counsels for the parties to address the Tribunal on the issues framed by the Tribunal. Written submissions have also been filed on affidavit by RERA. Appellants have not filed reply to the submissions filed by RERA and addressed the Tribunal orally on 24.01.2024.

15. Now we proceed to examine the issues framed by us on 20.02.2023 :-

- (i) Whether the Tribunal was required to only process the execution proceedings in pursuance to its order dated 27.10.2021 and subsequent similar orders passed on the basis of compromise/settlement between the parties?

As per the provisions of the Act & Rules, 2016, if any order passed to pay any principal amount, interest, penalty or compensation, by the Adjudicating Officer/Regulatory Authority or the appellate authority, as the case may be, is not being complied by the Promoter/allottee or real estate agent, as per the combined effect of Section 40 of RERA Act, 2016, Rule-23 RERA Rules, 2016, such amount, interest, penalty or compensation shall be recoverable as an arrears of land revenue, in such manner as may be prescribed. It is also clear that if any amount is not paid in accordance with orders and judgments, then the aggrieved party/decreed holder files execution before the authority or Tribunal on notice being issued to judgment debtor. If the decretal amount is not deposited in authority or Tribunal, then recovery certificate is issued to the concerned Collector for recovery of amount as arrears of land revenue. The Collector executes the recovery certificates according to the procedure laid down in Chapter XII of U.P. Revenue Code, 2006 from Sections 163 to 205.

Section 205 of Chapter XII of U.P. Revenue Code, 2006 lays down the provisions that this chapter shall apply to the recovery of all arrears of land revenue and all other sums recoverable as an arrear of land revenue whether due before or after commencement of this code. Perusal of Chapter XII of U.P. Revenue Code, 2006 reveals that it provides complete code for recovery as land revenue and in pursuance to the provisions of Section 40 of the Act, 2016 read with Rule-23 of the Rules, 2016, the Regulatory Authority/Tribunal is required to follow in its word and spirit the above

provisions and any deviation from the prescribed mode is nothing but violation of Act, 2016 and Rules, 2016. The Regulatory Authority and this Tribunal is bound to follow the mandates of the said provisions.

Above discussion makes it clear that after deciding the appeal before this Tribunal on compromise by its order dated 27.10.2021, the Tribunal was required to process the execution proceedings in accordance with the above provisions only.

The **issue no.1** is answered accordingly.

- (ii) Whether the Tribunal, as per the powers conferred upon it under section 40(1) and rule 23, had to restrict itself only to the issuing of the recovery certificates which would then have to be executed by the Collector as per the powers conferred under U.P. Revenue Code, 2006 and whether any interference by the Tribunal by way of a monitoring committee amounts to encroachment on lawful functioning of the Collector and other revenue authorities?

16. To examine this issue, it is proper to examine the procedure for recovery proceeding under the Act and Rules 2016. Section 40 of the Act 2016 provides for recovery of interest, penalty and compensation. The same is being extracted as under:--

“40. Recovery of interest or penalty or compensation and enforcement of order, etc.—(1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.

(2) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed.”

- 16.1 Section 57 : Orders passed by Appellate Tribunal to be executable as a decree.—(1)** Every order made by the Appellate Tribunal under this Act, shall be executable by the Appellate Tribunal as a decree of Civil Court, and for this purpose, the Appellate Tribunal shall have all the powers of a Civil Court.

- (2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a Civil Court having local

jurisdiction and such Civil Court shall execute the order as if it were a decree made by the Court.

Rule 23 of the U.P. Real Estate (Regulation and Development) Rules provides the manner of recovery of interest, penalty and compensation. The said rule is extracted below:--

“23. Manner of recovery of interest, penalty and compensation.—Subject to the provisions of sub-section (1) of Section 40, the recovery of the amounts due as arrears of land revenue shall be carried out in the manner provided in the local laws.”

16.2 Rule 24 : Manner of implementation of order, direction or decisions of the adjudicating officer, the Authority or the Appellate Tribunal.—For the purpose of sub-section (2) of Section 40, every order passed by the adjudicating officer, regulatory authority or Appellate Tribunal, as the case may be, under the Act or the rules and regulations, made thereunder, shall be enforced by the adjudicating officer, regulatory authority or the Appellate Tribunal in the same manner as if it were a decree or order made by the principal Civil Court in a suit pending therein and it shall be lawful for the adjudicating officer, regulatory authority or Appellate Tribunal, as the case may, in the event of its inability to execute the order, send such order to the principal Civil Court within the local limits of whose jurisdiction the real estate project is located or in the principal Civil Court within the local limits of whose jurisdiction the person against whom the order is being issued, actually and voluntarily resides, or carries on business, or personally works for gain.

16.3 Thus it is evident that Section 40 of the Act of 2016 provides for a mechanism for recovery of interest or penalty or compensation and enforcement of orders etc. of the A.O. or the Regulatory Authority, or the Appellate Tribunal and the same is recoverable in such manner as may be prescribed as an arrears of land revenue. The **Hon’ble Apex Court** vide **paragraph 140** in **M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP** (supra) was pleased to observe that:-

“140. It is settled principle of law that if the plain interpretation does not fulfill the mandate and object of the Act, this Court has to interpret the law in consonance with the spirit and purpose of the statute. There is indeed a visible inconsistency in the powers of the authority regarding refund of the amount received by the promoter and the provision of law in Section 18 and the text of the provision by which such refund can be referred under Section 40(1). While

harmonizing the construction of the scheme of the Act with the right of recovery as mandated in Section 40(1) of the Act keeping in mind the intention of the legislature to provide for a speedy recovery of the amount invested by the allottee along with the interest incurred thereon is self explanatory. However, if Section 40(1) is strictly construed and it is understood to mean that only penalty and interest on the principal amount are recoverable as arrears of land revenue, it would defeat the basic purpose of the Act.”

- 16.4 As can be seen from the above observations, Hon'ble Supreme Court has held that even the principal amount invested by the allottee can be recovered as arrears of land revenue under Section 40(1) of the Act. It is further clarified by Hon'ble Supreme Court that the intention of the legislature is to provide a mechanism for early recovery of the amount invested by the allottee along with the interest incurred thereon.
- 16.5 Rule 23 of the U.P. Real Estate (Regulation and Development) Rules, 2016 provides that subject to the provisions of Section 40(1), the recovery of the amounts due as arrears of land revenue shall be carried out in the manner provided in the local laws. As Rule 23 has been framed under the provisions of Section 40(1) of the Act, the observations of Hon'ble Supreme Court on Section 40(1) shall equally apply to Rule 23 of the Rules 2016.
- 16.6 Chapter XII of the U.P. Revenue Code 2006 provides a detailed procedure for collection of land revenue from issuing a writ of demand to the process for recovery of arrears including attachment and sale of movable property, attachment of bank account and locker of the defaulter and attachment and sale of other immovable property along with procedure of recovery, procedure of sale, stoppage of sale and procedure to set aside the sale on deposit of arrears as well as on account of irregularities in sale, confirmation of sale and setting aside the sale by the Collector or Commissioner etc.
- 16.7 Perusal of the provisions of Chapter XII of the U.P. Revenue Code 2006 reveals that it provides complete code for recovery of dues as land revenue and in pursuance to the provisions of Section 40 of the Act 2016 read with Rule 23 of the Rules 2016, the Regulatory Authority/Tribunal is required to follow in word and spirit the provisions of Chapter XII of the U.P. Revenue Code 2006 and any diversion from the prescribed mode is nothing but violation of the Act 2016 and Rules 2016. Thus the Regulatory Authority and this Tribunal is bound to follow the mandates of the said provisions. Bench No. 2 of this Tribunal, which was headed by Judicial Member, should have examined the requirement of law regarding recovery for enforcement

of the order of the Tribunal and similarly the learned Advocates appearing in the proceedings, being officer of the court, were also required to assist the Tribunal in pursuance to the provisions of the Act 2016 and Rules 2016.

16.8 Description of legal provisions and above discussion makes it clear that as soon as recovery certificate is issued by the Authority or Tribunal to the Collector, during the execution proceedings, the Collector is bound to follow the provisions of Chapter XII of U.P. Revenue Code, 2006. The Collector cannot deviate from the above provisions of Revenue Code and executing Tribunal also cannot interfere with the Collector's proceedings by prescribing any mode which is other than the prescribed mode of Chapter XII of U.P. Revenue Code, 2006. Bench No.2 of the Tribunal ordered to form monitoring committee keeping in view the arguments/objection of the judgment debtor about the possibility of distress sale of involved land and multiple recovery proceedings at RERA and Tribunal. During attachment and sale proceeding for recovery of land revenue by Collector, aggrieved party has full opportunity to file objections before the Collector and the Collector will dispose of the objections after hearing the parties. If party is not satisfied with the order of the Collector, such aggrieved party can file appeal against such order to the Commissioner and so on to the Hon'ble Board of Revenue, which shows that decree holder as well as judgment debtor both have full opportunity to ventilate their objections/grievances before the executing Collector. Therefore, neither provisions of Chapter XII of U.P. Revenue Code, 2006 permit nor any other law authorizes the Tribunal to monitor the recovery process of Collector step by step directly or by appointing any monitoring committee.

16.9 Judgment debtor has another option under the provisions of Section 203 of U.P. Revenue Code, which provides that "whenever proceedings are taken under this Chapter against any person for recovery of any arrear of land revenue, he may pay the amount claimed to the Recovery Officer and upon such payment the proceedings shall be stayed and the person against whom such proceedings were taken may, notwithstanding anything contained in any other proceedings of this code, *sue* the State Government in the civil court for the recovery of amount so paid."

16.10 Thus provisions of Chapter XII of Revenue Code are capable of avoiding distress sale of property, if parties concerned are vigilant and participates in recovery proceedings. Appointment of monitoring committee by Tribunal is certainly an encroachment into the execution proceedings pending before the Collectors on the basis of RC's issued by the Tribunal or Regulatory Authority.

The **issue no.(ii)** is answered accordingly.

17. (iii) Whether it was appropriate for the Tribunal to undertake monitoring with respect to all the 225 Execution matters, although it had not issued recovery certificates in many of these cases and whether it was lawful for the Tribunal to extend the scope of the monitoring committee even to the cases wherein the concerned complainant-allottees had not filed appeal before it against the order of the Regulatory Authority and were instead pressing for execution before the Regulatory Authority and whether restraining the auction proceedings with respect to such cases vide orders dated 30.08.2022, 18.10.2022 and 19.11.2022 did not amount to the Tribunal assuming extra-legal jurisdiction unto itself?

Bench No.2 of the Tribunal passed following order on 19.11.2022 :

“District Magistrate, Varanasi/any other Recovery Officer is directed to stop the auction proceeding to be held on 22.11.2022 relating to the properties of M/s.Agrani Homes Pvt.Ltd. till further orders.”

When the above order was challenged before the Hon'ble High Court in Writ C No.572/2023, Hon'ble High Court observed in order dated 08.02.2023 that :

“This Court fails to understand the logic behind the order dated 10.11.2022. A private person/allottee had approached the Tribunal against some orders passed by the U.P.RERA in favour of the Builder. The Builder being the judgment debtor in other cases had filed an application in the appeal of the private person/allottee and an interim relief has been granted by the appellate Tribunal to the judgment debtor, which is all encompassing in nature and stops recovery proceedings initiated by the District Administration, Varanasi against the Builder without any appeal being filed by the Builder against orders passed by the U.P.RERA in individual cases where 300 recovery citations are pending against such Builder.

This Court has taken *Suo Motu* notice of the order dated 19.11.2022.”

- 17.1 By the stay order dated 19.11.2022, all execution proceeding pending before the Collector, Varanasi against Agrani Homes Pvt.Ltd. came to halt. Several RCs issued by Authority against Agrani Homes Pvt Ltd. were pending

regarding the dispute. Against those judgments no appeal was preferred to Tribunal. Legal position is clear that executing court can take back or stay on appropriate grounds R.C. issued by it in any execution proceeding. Appellate Tribunal has only jurisdiction on those R.Cs which have been issued by it. Appellate Tribunal has no jurisdiction to stay or regulate the R.Cs issued by the Authority in execution cases pending before Authority because as per the effect of Sections 40 and 57 of Act, 2016 & Rule 23 of Rules, 2016, the Authority and Tribunal has to execute their order separately. The Tribunal has no supervisory or otherwise jurisdiction over the execution pending before the Authority in which no appeal was ever preferred. The Tribunal has the jurisdiction in the execution cases which have been filed to execute any order of the Tribunal only.

17.2 It has been submitted on behalf of the Promoter that Bench No.2 of Tribunal passed these orders in its wisdom. Law is clear on this point that no legal proceedings in any authority, courts, Tribunal can be conducted in its wisdom which is not in accordance with law or which is in excess of its statutory jurisdiction.

Issue No.(iii) is answered accordingly.

18. (iii) Whether it could have been appropriate for the Tribunal to transfer/refer the execution proceedings to the Regulatory Authority taking in view the fact that RERA had already issued recovery certificates against the promoter with respect to some of the complainants and to avoid the possibility of dual proceedings in some of the cases, albeit inadvertently?

A number of execution cases are pending before the Authority and Tribunal against the same judgment debtor and same properties of the scheme related to the present dispute.

It has been mentioned in its written submission that the Tribunal cannot transfer its execution cases to the Authority.

18.1 According to provisions of Section 57 of the Act & Rule 24 of the Rules, the Authority or Tribunal can transfer execution cases to civil court, which makes it clear that Tribunal has power to transfer its execution cases to civil court in accordance with the above provisions.

18.2 Though the orders of Authority has to be executed by the Authority and orders of Tribunal has to be executed by the Tribunal as per provisions of

Section 40 & 57 of Act, 2016 and Rules-23 & 24 of the Rules, yet looking into the joint interest of all decree holders and proper realization of decretal amount from the assets of judgment debtor, process of all execution cases should be conducted, heard and disposed of by the Authority. Realization orders issued by the Authority and Tribunal separately may create confusion before the Collector as to whether RC of Tribunal or Authority be given preference in execution proceedings. All these executions are against the same judgment debtor and involving the same assets of judgment debtor. In such peculiar situation and in the interest of justice, to avoid multiple execution proceedings at Authority & Tribunal, it will be in the larger interest of the decree holders to transfer/refer all these execution cases pending before the Tribunal to Regulatory Authority, so that all execution cases be dealt with on equal footing by Recovery Certificate issuing Authority as well as by Collector conducting the realization procedure. It will certainly check the chance of multiple proceedings too. **Issue No.(iv)** is answered accordingly.

19. (v) Whether the orders dated 30.08.2022, 18.10.2022 and 19.11.2022 are liable to be recalled *suo moto* in view of relevant provisions of the RERA Act, U.P. RERA Rules and the U.P. Revenue Code and to maintain judicial propriety?

19.1 By order dated 30.08.2022, Bench No.2 of the Tribunal directed District Magistrate/other recovery officer not to dispose of the properties of the builder company i.e. M/s Agrani Homes Pvt.Ltd. in the meantime otherwise the purpose of settlement between the parties shall be frustrated.

19.2 By order dated 18.10.2022, Tribunal formed a committee to supervise/monitor the recovery proceedings in which District Magistrate Varanasi had also to nominate its nominee for above committee. Role and duties of committee was also prescribed for supervision of recovery proceedings by order dated 09.11.2022, which are as under :

- (i) *To recover the amount from the judgment debtor and pay to the decree holders on proportionate basis.*
- (ii) *To expedite the recovery proceedings and to maximise the recovery from the judgment debtor through sale/arrangement of its assets.*

(iii) The specific roles, duties and scope of functions, schedule and mode of meetings etc. may be proposed by the committee after its first meeting.

19.3 On 19.11.2022, Bench No.2 of the Tribunal passed order that “District Magistrate Varanasi/Any other Recovery Officer is directed to stop the auction proceedings to be held on 22.11.2022 relating to the properties of M/s Agrani Homes Pvt.Ltd. till further orders.”

19.4 Previous discussions made it clear that principal amount as well as interest/penalty/compensation shall be recovered by Authority/A.O./Tribunal in such manner as may be prescribed for the recovery of arrears of land revenue. Chapter XII of the U.P.Revenue Code, 2006 prescribes detailed procedure for the recovery of arrears as land revenue. There is no such provision in Chapter XII of U.P.Revenue Code, 2006, which authorizes to the recovery process issuing Authority/Court/Officer/Tribunal to formulate a committee to supervise/monitor the recovery proceeding step by step pending before Recovery officer/Collector, hence, Bench No.2 of the Tribunal travelled beyond jurisdiction/authority while passing following order –

- (i) to monitor/supervise the arrear recovery proceedings pending before Collector by forming monitoring committee
- (ii) to stop/stay the recovery proceedings pending before the Collector on the basis of recovery certificate of Authority against which no appeal was pending or even preferred before the Tribunal against the order of Authority.

19.5 Resultantly, Bench No.2 of the Tribunal exceeded its jurisdiction by passing above orders to the above discussed effect.

19.6 Hon’ble High Court in the bunch of writ petitions, leading being Writ C No.572 of 2023 pleased to observe vide order dated 31.05.2023 that “we modify our earlier orders quoted hereinabove with liberty to the Real Estate Appellate Tribunal to proceed and consider the questions framed by it in its order dated 20.02.2023 and itself rectify the error committed, if it is so”.

From the above discussions it is established that the orders passed by Bench No.2 of this Tribunal to monitor the execution proceeding pending before the Collector by appointing the monitoring committee and stay the execution proceeding pending before the Collector which affected the R.Cs. issued by Authority too, are not according to the prescribed legal provisions and procedure. Those orders have been passed by Bench No.2 of the Tribunal exceeding its jurisdiction. Therefore, it will be in the interest of justice to rectify above error of Bench No.2, and recall the orders dated 30.08.2022, 18.10.2022 and 19.11.2022, which are passed in excess of jurisdiction by Bench No.2 of the Tribunal.

Issue No.(v) is answered accordingly.

20. Accordingly, the orders dated 30.08.2022, 18.10.2022 and 19.11.2022 passed by Bench No.2 of the Tribunal, are hereby **recalled**.
21. This order will not affect the Escrow Account opened under the orders of RERA and money deposited, if any, into this account by realization through execution of Recovery Certificates issued in these matters either by RERA or by the Tribunal.
22. EA No.1946/2022 (Appeal No.31/2021) and all connected execution cases pending in Tribunal against M/s. Agrani Homes Pvt.Ltd. relating to IOB Varanasi Scheme, are transferred/referred to the Regulatory Authority for disposal according to law along with the other executions of the same nature pending before the Authority.
23. The Registry will provide a comprehensive list giving the execution case numbers and parties' name along with the physical record, if any. The Registry is further directed to check if there is any other execution case of similar nature (not connected with the instant Bunch) will also be transferred/referred. The learned counsel for the applicants/decreed holders are also directed to present entire record of the proceedings of the Tribunal of the respective cases. The digital record of judicial proceedings of UP REAT are accessible to RERA. Therefore, RERA can also take care as per their need while executing the concerned orders.

24. Registry is directed to send a copy of this order to the Senior Registrar of Hon'ble High Court for placing the same before the Hon'ble High Court in compliance of the order dated 31.05.2023, passed in Writ C No. 572/2023.
25. Registry is directed to take necessary steps accordingly.

Dated : 28.03.2024
Irfan

(Sanjai Khare)

(D.K.Arora)