

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 2

EA-1254/2022
IN
Appeal/933/2020

ASHOK KUMAR SRIVASTAV

.....Appellant

Versus

AGRANI HOMES PVT LTD

.....Respondent

Counsel for Appellant

Counsel for Respondent

Hon'ble Mr. T.B. Singh, Judicial Member
Hon'ble Mr. K.K. Jain, Technical Member

Case called on.

Counsel Sri Abhishek Khare appeared on behalf of decree holder, and Sri Alok Kumar, the judgment debtor/Director of the builder-company alongwith his counsel Sri Sanjay Awasthi appeared.

Counsel for the decree holder submitted that the decree holder has not received any amount till date therefore proceeding under Section 64 of the Act be initiated against the judgment debtor. He further submitted that he is representing EA No. 1254/2022 and EA No. 1256/2022 in 02 cases of execution pending before this Tribunal.

The judgment debtor submitted that there are many other execution cases pending before this Tribunal and he is complying directions of the Tribunal and deposited approximately 1.5 crore in escrow account as per direction of this Tribunal till date. The judgment debtor further submitted that as per direction of this Hon'ble Tribunal he has submitted detailed plan regarding selling of his assets and distribution of amount proportionately to all the decree holders in planned manner. There are bunch of about 247 execution applications pending before this Tribunal and according to the requirement of the Tribunal and most of the other decree holders he is co-operating and following the directions issued by the Tribunals from time to time.

The representative and counsel of other decree holders were present in the Court also agreed with the judgment debtor and are satisfied with the procedure of recovery.

The counsel of 02 decree holders in EA No. 1254/2022 and 1256/2022 Sri Abhishek Khare was not satisfied with the procedure of recovery and insisted that recovery proceeding under Section 64 of the Act be initiated immediately against the judgment debtor.

Considering the facts and circumstances, it is our considered view that if recovery proceedings initiated separately in all the cases and assets of the judgment debtor are sold or auctioned in non planned manner or as “distress sale”, the recovered amount will not be sufficient for payment of all the decree holders, therefore recovery proceedings against the judgment debtor should be carried out in planned manner. The penalty proceeding under Section 64 of the Act are not required to be initiated at this stage as judgment debtor is co-operating with the decree holders and judgment debtor cannot sale its assets without permission of the Tribunal. All the recovered amount is being deposited in the escrow account will be released proportionately to all the decree holders.

List this case on **11.10.2022** for further order.

(K.K. Jain)

(T.B. Singh)

Dated: 30.09.2022
PRADEEPKUMAR