

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH**

EXECUTION PETITION NO. PET 2025001

IN THE MATTER OF:-

Dr. Rajneesh Sood, Son of Sh. Kishori Lal Sood, Resident of Radha Behari Nikunj, Jakhu Housing Colony Shimla-2, Shimla, Himachal Pradesh, 171002

..... Decree Holder

Versus

M/s Omaxe Limited its registered office at 7, Local Shopping Centre, Kalkaji, New Delhi 110019

..... Judgment debtor

Present:- Vivek Negi Ld. Counsel for the decree holder

Sh. Shivank Singh Panta for the judgment debtor

Final date of hearing: 20.02.2026

Date of pronouncement of order: 06.03.2026

Order

Coram: Chairperson and Member

1. FACTS OF THE OBJECTIONS:-

That the Respondent is a Public Limited Company duly incorporated under the provisions of the Companies Act, 1956, having its registered office at Shop No. 19-B, First Floor, Omaxe Celebration Mall, Sohna Road, Gurgaon (Haryana) and its corporate office at 7, LSC, Kalkaji, New Delhi. The Respondent Company developed and constructed the

residential/group housing project namely *Omaxe Parkwood, Baddi* only after obtaining all requisite permissions, approvals and No Objection Certificates from the competent Government authorities, departments and agencies. That vide a detailed, reasoned and speaking order dated 06.06.2024, this Hon'ble Authority directed the Respondent/Judgment Debtor, inter alia, to refund an amount of Rs. 16,60,660/- (Rupees Sixteen Lakhs Sixty Thousand Six Hundred and Sixty Only) along with interest at the rate of SBI highest Marginal Cost of Lending Rate plus 2% as prescribed under Rule 15 of the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017, which was calculated at 10.85% per annum. The Respondent was further directed to make payment within a period of sixty days from the date of the order, failing which the Respondent was made liable under Section 63 of the Real Estate (Regulation and Development) Act, 2016 for a per day penalty of Rs. 10,000/- till realization. Additionally, a penalty of Rs. 5,00,000/- was imposed upon the Respondent on account of unfair trade practices, payable within sixty days, while liberty was reserved in favour of the Complainant to approach the Adjudicating Officer for seeking compensation. That in compliance with the aforesaid directions and without prejudice to its rights and contentions, the Respondent/Judgment Debtor has deposited a sum of Rs. 41,11,512/- with this Hon'ble Authority, in respect whereof a Certificate of Acknowledgment dated 21.07.2025 has been issued. The said certificate has been placed on record as Annexure R-2. That the Respondent/Judgment Debtor has preferred an appeal under Section 44 of the Real Estate (Regulation and Development) Act, 2016 before the Hon'ble Real Estate Appellate Tribunal challenging the order dated 06.06.2024, which has been assigned Diary No. 25 of 2025 and is

presently pending formal registration. Along with the appeal, an application seeking stay of the execution of the impugned order has also been filed and registered as CM No. 18 of 2025, which is pending adjudication. An application for condonation of delay has also been filed and is awaiting consideration. It is also submitted that permitting the Decree Holder/Petitioner to withdraw the amount deposited with this Authority at this stage, without insisting upon adequate safeguards, would render the statutory right of appeal infructuous, particularly in the event the appeal is allowed either wholly or partially. In the absence of adjudication of the stay application, unconditional withdrawal of the deposited amount is likely to cause grave prejudice and irreparable loss to the Respondent/Judgment Debtor. That in the event the appeal is admitted and ultimately allowed, recovery of the withdrawn amount from the Decree Holder may become difficult, thereby frustrating the very object of the appellate proceedings. It is, therefore, necessary in the interest of justice that withdrawal of the deposited amount, if any, be made subject to furnishing of adequate security commensurate with the amount deposited, to the satisfaction of this Authority. That permitting withdrawal of the deposited amount prior to adjudication of the stay application would defeat the statutory remedy available to the Respondent and render the pending appeal nugatory. In view of the facts and circumstances stated hereinabove, it is prayed that this Authority may take on record the fact that the Respondent/Judgment Debtor has deposited a sum of Rs. 41,11,512/- in compliance with the order dated 06.06.2024; take note of the pendency of the appeal along with the stay application before the Hon'ble Real Estate Appellate Tribunal; keep the present execution proceedings in abeyance or defer

further proceedings till the disposal of the stay application; in the alternative, direct the Decree Holder/Petitioner to furnish adequate security to the satisfaction of this Hon'ble Authority equivalent to the amount deposited before permitting withdrawal; and pass such other or further orders as this Hon'ble Authority may deem fit and proper in the facts and circumstances of the case.

2. REPLY TO THE OBJECTIONS

That the contents of paragraph I of the reply, insofar as they relate to the status of the Respondent as a Public Limited Company and the existence of its offices at various places, are not disputed and hence require no rejoinder. However, the remaining averments made therein are specifically denied. It was submitted that the residential/group housing project in question has not been developed or constructed in accordance with the requisite permissions, approvals, No Objection Certificates or the sanctioned/approved plan. It was admitted that this Authority has passed a detailed, comprehensive, structured and reasoned order dated 06.06.2024, against which the Judgment Debtor/Respondent has no justifiable cause of grievance. It was submitted that the Decree Holder/Complainant has no knowledge of the alleged deposit of Rs. 41,11,512/- claimed to have been made by the Judgment Debtor/Respondent. The Judgment Debtor/Respondent is, therefore, put to strict proof of the said averment and the same may also be independently verified by this Authority. That insofar as the averments relating to filing of the appeal by the Judgment Debtor/Respondent are concerned, the same are a matter of record. However, it is submitted that no notice of the said appeal has been served upon the Decree Holder/Complainant till date. On enquiries

made through counsel, the Decree Holder/Complainant has been informed that on the last date of hearing the Judgment Debtor/Respondent failed to appear before the learned Appellate Authority and the matter now stands posted for 20.02.2025. It was specifically submitted that no stay on the operation or execution of the order dated 06.06.2024 has been granted by the learned Appellate Authority. That the averments regarding the pendency of the stay application and the application for condonation of delay are a matter of record. It is submitted that the Judgment Debtor/Respondent has failed to disclose any reasonable or justifiable cause for not filing the appeal within limitation or for not complying with the order dated 06.06.2024 within the stipulated period. The application for condonation of delay as well as the appeal itself are liable to be dismissed and, in all probabilities, shall not survive judicial scrutiny. It is reiterated that mere filing of an appeal does not operate as a stay and does not divest this Authority, acting as an executing authority, of its jurisdiction to proceed with execution of its order. In this regard, the DH relies upon the order dated 15.09.2025 passed by the Hon'ble Supreme Court of India in Civil Appeal No. 11840 of 2025 SLP (C) No. 20480 of 2025, a copy whereof has been placed on record. It was further submitted that upon passing of the order dated 06.06.2024, a valuable and enforceable right has accrued in favour of the Decree Holder/Complainant, entitling him to the fruits of the litigation. The Judgment Debtor/Respondent failed to hand over possession of the promised area in respect of the plot agreed to be sold to the Decree Holder/Complainant and, therefore, the Decree Holder/Complainant is lawfully entitled to refund of the amount along with statutory interest, costs and penalties as awarded by this Authority, without

any pre-conditions. It was denied that release of the deposited amount would cause any irreparable loss or prejudice to the Judgment Debtor/Respondent. The apprehensions raised are speculative, self-serving and legally untenable. The appeal preferred by the Judgment Debtor/Respondent is, in all likelihood, liable to be dismissed. It was reiterated that the development and construction of the project have been carried out in violation of the approved plan. That the prayer of the Judgment Debtor/Respondent seeking liberty to place on record additional documents or submissions at a later stage is wholly misconceived and deserves to be rejected. In view of the aforesaid facts and circumstances, it is most respectfully prayed that the execution petition filed by the Decree Holder/Complainant be allowed in terms of the relief clause contained therein and the amount, if any, deposited by the Judgment Debtor/Respondent be ordered to be released forthwith in favour of the Decree Holder/Complainant. The Judgment Debtor/Respondent may further be directed to deposit and make good any shortfall in terms of the order dated 06.06.2024 passed by this Authority. Any other or further order, as this Authority may deem fit and proper in the facts and circumstances of the case, may also be passed in favour of the Decree Holder/Complainant.

3. ARGUMENTS/ SUBMISSIONS ON BEHALF OF THE DECREEHOLDER

The Ld. Counsel for the Decree Holder submitted that a rejoinder has already been filed to the objections raised by the Judgment Debtor. It was submitted that the Judgment Debtor claims to have preferred an appeal, the same is admittedly time-barred. On the last date of hearing before the Learned Appellate Authority in December, no one

appeared on behalf of the appellant/Judgment Debtor, which clearly demonstrates that the Judgment Debtor is not serious in pursuing the appellate remedy. It was further submitted that a decree has been passed in favour of the Decree Holder whereby the Judgment Debtor has been directed to refund the amount received towards the plot, along with statutory interest, on account of failure to hand over possession of the plot. In these circumstances, it was respectfully prayed that since the decretal amount has already been deposited, the same may be released in favour of the Decree Holder. Upon the query of the Authority that the amount deposited was a legal pre-condition for filing the appeal and questioned how the same could be released, the Ld. Counsel for the Decree Holder submitted that the appeal is still not registered and remains time-barred. It was further submitted that the Decree Holder has placed on record a judgment of the Hon'ble Supreme Court of India, which categorically holds that in the absence of any stay granted by the Appellate Authority, execution proceedings do not stand automatically stayed. Since this Authority is presently acting as the executing court and there is no stay order operating against the decree, the deposited amount, to which the Decree Holder is lawfully entitled, ought to be released. It was further submitted that the objections raised by the Judgment Debtor are misconceived and are merely intended to delay execution of the decree. Ld. Counsel reiterated that the decree directs refund of the amount along with statutory interest and penalty, and in the absence of any stay by the Appellate Authority, the decree is liable to be executed forthwith. It was relies upon the judgment of the Hon'ble Supreme Court holding that execution proceedings continue in the absence of a stay and was thus prayed that the objections be dismissed and execution be

allowed. The Ld. Counsel further submitted that merely filing a delayed appeal cannot be permitted to obstruct enforcement of a lawful decree. The Judgment Debtor failed to deliver the plot despite receiving consideration, and therefore cannot avoid the execution of the order. It was also submitted that in the execution petition, complete details regarding the Judgment Debtor's properties and accounts have already been furnished.

4. SUBMISSIONS ON BEHALF OF THE JUDGMENT DEBTOR (JD)

The Ld. Counsel for the Judgment Debtor submitted that he has been orally instructed that the appeal preferred against the decree was listed on 20.02.2026 before the Ld. Appellate Tribunal. However, due to absence of the requisite Member, the Bench was not properly constituted and, therefore, the matter could not be taken up and was deferred to a subsequent date. It was further submitted that a consolidated amount exceeding Rs. 41,00,000/- has already been deposited towards satisfaction of the decree and the said amount is presently lying deposited with this Authority. It was stated that the cost of Rs. 5,00,000/-, the penal component, the statutory interest and the principal amount of approximately Rs. 16,00,000/- representing the amount invested by the complainant towards purchase of the plot have all been deposited. It was asserted that the Judgment Debtor has deposited the entire decretal amount. Ld. Counsel further submitted that if the entire deposited amount is released in favour of the Decree Holder at this stage and the Judgment Debtor ultimately succeeds in appeal, the appellate remedy would become illusory and the Judgment Debtor would be compelled to engage in unnecessary recovery proceedings. It was submitted that

the appeal is pending consideration, and it is accompanied by an application under Section 5 of the Limitation Act, the matter is still sub-judice before the Appellate Tribunal. It was argued that since the appeal is pending adjudication, the amount deposited should not be released and should continue to remain in the custody of this Authority. The Ld. Counsel emphasized that the deposit was made in compliance with the statutory pre-condition for filing the appeal and not with the intention of enabling immediate release to the Decree Holder. It was submitted that having complied with the decree by depositing the entire amount, the Judgment Debtor's property cannot be attached. The Ld. Counsel reiterated that there is presently no stay, but the appeal is pending consideration. It was prayed that the deposited amount be permitted to remain with this Authority till the appeal is decided and that the amount should not be released at this stage.

5. FINDINGS:

We have heard the Ld. Counsel for the parties and have carefully considered the objections filed by the Judgment Debtor, the reply and rejoinder filed by the Decree Holder, the execution petition and the final order dated 06.06.2024 sought to be executed. At the outset, it is a settled position of law that the jurisdiction of an executing court or authority is confined strictly to execution of the decree as it stands and it cannot go behind the decree, even if the decree is alleged to be erroneous on facts or in law. The Hon'ble High Court of Himachal Pradesh in **Nalagarh Dehati Cooperative Transport Society v. Suraj Mani, 1976 Shimla Law Journal 172**, held that the executing court cannot go behind the decree even if erroneous on facts or law.

Similarly, the **Hon'ble Supreme Court in Rajasthan Financial Corporation v. Man Industrial Corporation Ltd. (2003) 7 SCC 522 and Rameshwar Das Gupta v. State of U.P. (1996) 5 SCC 728** reiterated that execution courts must take the decree according to its tenor. Most authoritatively, in **Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman (1970) 1 SCC 670**, it was laid down that even an erroneous decree remains binding unless set aside in appeal or revision. Further, in **Rahul S. Shah Vs. Jinendra Kumar Gandhi and Ors., Civil Appeal Nos. 1659-1660 of 2021, decided on 22.04.2021**, the Hon'ble Court had made the following observations:

"24. In respect of execution of a decree, Section 47 CPC contemplates adjudication of limited nature of issues relating to execution i.e. discharge or satisfaction of the decree and is aligned with the consequential provisions of Order 21 CPC. Section 47 is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind. Firstly, the question must be the one arising between the parties and secondly, the dispute relates to the execution, discharge or satisfaction of the decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.

25. These provisions contemplate that for execution of decrees, executing court must not go beyond the decree. However, there is steady rise of proceedings akin to a retrial at the time of execution causing failure of realization of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the executing court and the decree-holder is deprived of the fruits of the litigation and the judgment-debtor, in abuse of process of law, is allowed to benefit from the subject-matter which he is otherwise not entitled to.

26. The general practice prevailing in the subordinate courts is that invariably in all execution applications, the courts first issue show-cause notice asking the judgment debtor as to why the decree should not be executed as is given under

Order 21 Rule 22 for certain class of cases. However, this is often misconstrued as the beginning of a new trial. For example, the judgment-debtor sometimes misuses the provisions of Order 21 Rule 2 and Order 21 Rule 11 to set up an oral plea, which invariably leaves no option with the court but to record oral evidence which may be frivolous. This drags the execution proceedings indefinitely.

27. This is antithesis to the scheme of the Civil Procedure Code, which stipulates that in civil suit, all questions and issues that may arise must be decided in one and the same trial. Order 1 and Order 2 which relate to parties to suits and frame of suits with the object of avoiding multiplicity of proceedings, provides for joinder of parties and joinder of cause of action so that common questions of law and facts could be decided at one go”.

Further, the **Hon'ble Supreme Court in Chakardhari Surekha vs. Prem Lata Surekha through SPA & Ors, Civil Appeal No. 11840/2025 @ SLP (C) No/20480 of 2025**, observed as under:

“6. the question of executability of the award can be gone into by the Execution Court in accordance with law while addressing objections as and when raised. However, it would not be proper for the Execution Court to defer consideration of the execution application and the objections thereto only because an appeal is pending under Section 37 when there is no interim order operating against the award against which objection under Section 34 of the Act stands rejected.

7. In view of the above, we deem it appropriate to dispose of this appeal by observing that subject to any interim order passed in the appeal pending under Section 37 of the Act, the Execution Court shall be free to proceed with the execution of the award in accordance with law. Needless to observe that if any objection is raised as regards executability of the award, the same shall be addressed in accordance with law after giving opportunity of hearing to the parties concerned.”

Further, in the matter involving, **M/s Shree Chamundi Mopeds Ltd.**, had obtained a favourable decree from a lower court, which was upheld by the Hon'ble High Court. The decree involved the delivery of

possession of immovable property, which was occupied by the respondent, Church of South India Trust Association. Despite the decree being final, the respondent challenged its execution on multiple grounds, including that the decree had become unexecutable due to subsequent events and that it was barred by the doctrine of res judicata. The executing court rejected the objections, but the matter reached the Supreme Court through special leave petitions. The Hon'ble Apex court, while deciding the matter, had addressed complex issues of law surrounding the execution of decrees, particularly in light of claims that the decree had become unexecutable due to the lapse of time and changes in factual circumstances. The Supreme Court's judgment in this case clarified several important principles governing the execution of decrees, which are summarized as follows:

i. *The Hon'ble Court reaffirmed that the doctrine of res judicata applies to execution proceedings as well. Once an issue has been adjudicated upon by a competent court, it cannot be reopened in subsequent proceedings, including those related to execution. The Court emphasized that repeated objections by the judgment debtor, which had already been decided in previous stages of litigation, cannot be entertained in the execution stage.*

ii. *A significant issue raised in this case was whether subsequent changes in circumstances, such as alterations in the status of the property, could render the decree unexecutable. The Court held that unless the decree itself has been altered or set aside through legal means, changes in circumstances after the passing of the decree do not automatically make it unenforceable. The Court stated that executing courts cannot revisit the merits of the case or the decree's validity unless there is a legal modification.*

iii. *The Hon'ble Supreme Court underscored the importance of Section 47 of the CPC, which provides that all questions arising between the parties to the suit regarding the execution, discharge, or satisfaction of the decree shall be*

determined by the executing court and clarified that the executing court has wide powers to ensure the decree's enforcement, but, it cannot go beyond the decree or alter its terms.

iv. The respondent also raised the defence of estoppel, arguing that the decree-holder's conduct during previous proceedings precluded them from enforcing the decree. The Hon'ble Court dismissed this contention, noting that estoppel cannot be used to bar the enforcement of a valid and final decree, especially where the judgment debtor has benefitted from delaying the execution.

v. The Hon'ble Court also stressed the need for a practical approach in execution proceedings, recognizing that the very purpose of litigation is defeated if decrees are not enforced efficiently. It urged lower courts to avoid unnecessary technicalities that delay execution and to ensure swift enforcement of judgments to uphold the rule of law.

It is observed that this ruling from the Hon'ble Supreme Court has significant implications for the execution of decrees and it reinforces the principle that once a decree is passed, it must be executed in a timely and effective manner, and judgment debtors cannot frustrate the process through frivolous objections or procedural delays. Further, the judgment underscores the finality of decrees and reiterates that courts cannot revisit issues that have already been decided. Moreover, the Hon'ble Court's firm stance against delaying tactics sends a clear message to judgment debtors that they cannot escape liability by exploiting procedural loopholes. This is expected to reduce the number of frivolous objections raised during execution proceedings, leading to more efficient enforcement of decrees.

Applying the aforesaid settled legal principles, this Authority finds that though an appeal against the order dated 06.06.2024 has been filed, there is no stay order issued by the Ld. Appellate Tribunal. It is

an admitted position that the order dated 06.06.2024 remains operative and has not been stayed by the Hon'ble Real Estate Appellate Tribunal. Mere filing of an appeal, particularly when the same is stated to be pending registration along with an application for condonation of delay, does not operate as an automatic stay on execution of the decree. The executing authority is bound to proceed with execution unless restrained by a specific stay order passed by the Ld. Appellate Tribunal. It is also fact that the amount deposited was only to fulfill the statutory pre-condition for filing an appeal. Execution proceedings must continue passing through various stages in a time bound manner, failing which the entire exercise by DHs in obtaining the decree would be rendered futile and the Execution proceedings cannot be kept in abeyance on such grounds. In view of the settled legal position laid down by the Hon'ble High Court and the Hon'ble Supreme Court in the aforesaid judgments, this Authority holds that the objections filed by the Judgment Debtor are beyond the scope of execution, legally untenable and devoid of merit and deserve to be dismissed. Accordingly, the Judgment Debtor is directed to refund the decretal amount of Rs. 21,04,498/- including interest upto 23.05.2025 (as per calculation sheet submitted by the DH) and comply with the order of this Authority within a period of **30 Days** from the date of this order. In the event of failure to refund the aforesaid amount, the Judgment Debtor is further directed to file an affidavit disclosing the details of his assets in the format contained in **Appendix XVI of Regulation 3 of the Himachal Pradesh Real Estate (Regulation and Development) Regulations**, within a further period of **15 days**. It is also directed that, in the event of failure of the Judgment Debtor to comply with the above directions within the

prescribed period, the Judgment Debtor shall be liable for further coercive action in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Regulations framed thereunder.



**R.D. DHIMAN
(CHAIRPERSON)**



**VIDUR MEHTA
(MEMBER)**