

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH**

Suo Moto Petition in the matters of,

Complaint no. HPRERA/OFL/2020/14

Vidya Negi, W/O Lt. Col. Mehar Singh Negi, R/O Flat no.7, Block 10,
Phase-3, New Shimla, Himachal Pradesh, 171009

Versus

M/s Rajdeep & Company Infra Private Limited through its Director Sh.
Rajdeep Sharma, S/O Sh. Sansar Chand, Registered office at SCO 12, 1st
Floor , Hollywood Plaza, VIP Road , Zirakpur, Punjab

**Suo moto ex. Pt. no. 7 of 2021
MA No. 1-R2/21-2023**

H.P. Real Estate Regulatory Authority, Annex Building, Majitha House,
Near HP Govt Sectt. Chota Shimla, Himachal Pradesh

Versus

M/s Rajdeep & Company Infra Private Limited through its Director Sh.
Rajdeep Sharma, S/O Sh. Sansar Chand, Registered office at SCO 12, 1st
Floor , Hollywood Plaza, VIP Road , Zirakpur, Punjab

Complaint no. RERA/HPSOCTA/04190016

- 1) Godawari Bhardwaj, W/O Sh. Roshan Lal Bhardwaj, R/O Village Kohari,
Hill View, Tehsil & PO Kandaghat, Distt Solan, Himachal Pradesh
- 2) Ashok Bhardwaj, S/O Sh. Roshan Lal Bhardwaj, R/O Village Kohari, Hill
View, Tehsil & PO Kandaghat, Distt Solan, Himachal Pradesh

Versus

M/s Rajdeep & co. Infra Private Limited through its Director Sh. Rajdeep Sharma, S/O Sh. Sansar Chand, Registered office at SCO 12, 1st Floor , Hollywood Plaza, VIP Road , Zirakpur, Punjab

Suo moto ex. Pt. no. 4 of 2021

MA No. 1-R2/22-2023

H.P. Real Estate Regulatory Authority, Annex Building, Majitha House, Near HP Govt Sectt. Chota Shimla, Himachal Pradesh

Versus

M/s Rajdeep & Company Infra Private Limited through its Director Sh. Rajdeep Sharma, S/O Sh. Sansar Chand, Registered office at SCO 12, 1st Floor , Hollywood Plaza, VIP Road , Zirakpur, Punjab

Complaint no. RERA/HPSOCTA/04190016

Suresh Kumar Sharma, S/O Lt. Sh. Mati Dhar Sharma, R/O Vill & PO Pangna, Sub Tehsil Pangna, Distt Mandi, Himachal Pradesh

Versus

M/s Rajdeep & co. Infra Private Limited through its Director Sh. Rajdeep Sharma, S/O Sh. Sansar Chand, Registered office at SCO 12, 1st Floor , Hollywood Plaza, VIP Road , Zirakpur, Punjab

Suo moto ex. Pt. No. 9 of 2023

MA No. 1-R2/23-2023

H.P. Real Estate Regulatory Authority, Annex Building, Majitha House, Near HP Govt Sectt. Chota Shimla, Himachal Pradesh

Versus

M/s Rajdeep & Company Infra Private Limited and another, through its Director Sh. Rajdeep Sharma, S/O Sh. Sansar Chand, Registered office at SCO 12, 1st Floor , Hollywood Plaza, VIP Road , Zirakpur, Punjab

Complaint No. RERAHPSHCTA05180003

- 1) Paras Verma, S/O Sh. Suresh Kumar Nayar, R/O T-24, 204, Common Wealth Games, Delhi - 110092
- 2) Anita Verma D/O Sh. Mahinder Singh Verma, R/O T-24, 204, Common Wealth Games, Delhi - 110092

Versus

M/s Rajdeep & co infra private limited through its Director Sh. Rajdeep Sharma, S/O Sh. Sansar Chand, Registered office at SCO 12, 1st Floor , Hollywood Plaza, VIP Road , Zirakpur, Punjab

Suo moto Ex. Pt. no. 08 of 2021

MA No. 1-R2/24-2023

H.P. Real Estate Regulatory Authority, Annex Building, Majitha House, Near HP Govt Sectt. Chota Shimla, Himachal Pradesh

Versus

M/s Rajdeep & Company Infra Private Limited through its Director Sh. Rajdeep Sharma, S/O Sh. Sansar Chand, Registered office at SCO 12, 1st Floor , Hollywood Plaza, VIP Road , Zirakpur, Punjab

Complaint No. HP/RERAOFL-2020-03(A)

Jeetender Bhardwaj, S/O Sh. Tikka Ram Bhardwaj, R/O Village Nala, PO Fagu, Tehsil & Distt Shimla, Himachal Pradesh

Versus

M/s Rajdeep & co infra private limited, through its Director Sh. Rajdeep Sharma, S/O Sh. Sansar Chand, Registered office at SCO 12, 1st Floor , Hollywood Plaza, VIP Road , Zirakpur, Punjab

Suo moto Ex. Pt. no. 10 of 2021

MA No. 1-R2/25-2023

H.P. Real Estate Regulatory Authority, Annex Building, Majitha House,
Near HP Govt Sectt. Chota Shimla, Himachal Pradesh

Versus

M/s Rajdeep & Company Infra Private Limited through its Director Sh.
Rajdeep Sharma, S/O Sh. Sansar Chand, Registered office at SCO 12, 1st
Floor , Hollywood Plaza, VIP Road , Zirakpur, Punjab

Complaint No. HP/RERAOFL-2020-03(B)

Narender Bhardwaj, S/O Sh. Tikka Ram Bhardwaj, R/O Village Nala, PO
Fagu, Tehsil & Distt Shimla, Himachal Pradesh

Versus

M/s Rajdeep & co infra private limited, through its Director Sh. Rajdeep
Sharma, S/O Sh. Sansar Chand, Registered office at SCO 12, 1st Floor ,
Hollywood Plaza, VIP Road , Zirakpur, Punjab

Suo Moto ex. Pt. no. 10 of 2021

MA No. 1-R2/26-2023

H.P. Real Estate Regulatory Authority, Annex Building, Majitha House,
Near HP Govt Sectt. Chota Shimla, Himachal Pradesh

Versus

M/s Rajdeep & Company Infra Private Limited through its Director Sh.
Rajdeep Sharma, S/O Sh. Sansar Chand, Registered office at SCO 12, 1st
Floor , Hollywood Plaza, VIP Road , Zirakpur, Punjab

Complaint no. RERAHPHCTA06200024

MA No. 1-R2/27-2023

Aditi Rao, D/O Smt. Nisha Singh, R/O A-17, Block-A Ground Floor, Niti Bagh, Delhi- 110049

Versus

M/s Rajdeep & Company Infra Private Limited through its Director Sh. Rajdeep Sharma, S/O Sh. Sansar Chand, Registered office at SCO 12, 1st Floor , Hollywood Plaza, VIP Road , Zirakpur, Punjab

Complaint No. RERAHPHCTA06200025

MA No. 1-R2/28-2023

Nisha Singh, D/O Sh. Trilochan Singh, R/O A-17, Block-A Ground Floor, Niti Bagh, Delhi- 110049

Versus

M/s Rajdeep & Company Infra Private Limited through its Director Sh. Rajdeep Sharma, S/O Sh. Sansar Chand registered office at SCO 12, 1st Floor, Hollywood Plaza, VIP Road, Zirakpur, Punjab.

Complaint No. RERAHPMACTA06200026

MA NO. 1-R2/29-2023

Vivek Gupta, S/O Sh. Gurdev Gupta, R/O Near Naveen Pustak Bhadar, Sarkaghat, District Mandi, Himachal Pradesh.

Versus

M/s Rajdeep & Company Infra Private Limited through its Director Sh. Rajdeep Sharma, S/O Sh. Sansar Chand, Registered office at SCO 12, 1st Floor , Hollywood Plaza, VIP Road , Zirakpur, Punjab

Complaint No. RERAHPHCTA04180002

MA NO. 1-R2/30-2023

Ravikant, S/o Shri Kewal Ram and Smt Ranjana Sharma W/o Sh Ravi Kant both R/o 81/1A, Trikant Niwas, Lower Cemetery, Sanjauli, Shimla- Himachal Pradesh

Versus

M/s Rajdeep & Company Infra Private Limited through its Director Sh. Rajdeep Sharma, S/O Sh. Sansar Chand, Registered office at SCO 12, 1st Floor , Hollywood Plaza, VIP Road , Zirakpur, Punjab

Present: Rishi Kaushal for JD

Miss Geetanshu, Law Officer, RERA Himachal Pradesh

Final date of hearing (through WebEx):11.12.2023

Pronouncement of orders:16.12.2023

ORDER

CORAM: Rajeev Verma (Member)

1. Facts of the case

The above mentioned complaints filed by the complainants were adjudicated by this Authority and orders passed on 16.12.2020, 17.12.2020 and 22.12.2020 wherein the complaints were allowed, and inter alia, penalty was imposed on the respondent/JD under section 61 & 69 of RERD Act, 2016 for failure to fulfill their obligations as prescribed under section 11 and 14 of the RERD Act. Therefore, the aforementioned Suo Moto petitions arising from the orders dated 16.12.2020, 17.12.2020 & 22.12.2020 were initiated by this Authority. However, the JD/respondent paid full penalty amount in three cases and paid 30%/part penalty amount in seven cases and preferred appeals under section 43(5) of the RERD Act, 2016 challenging the penalty imposed by the Authority vide its orders dated 16.12.2020,17.12.2020 & 22.12.2020. During the pendency of appeals, the complainants/DH and respondent/JD resolved their main issues in accordance with the directions passed by the Authority. However, the issue of penalty as was imposed on JD by the Authority was not settled as JD/respondent had deposited full penalty amount in the case of Vivek Gupta amounting to six Lakh, Paras Verma amounting to Five Lakh and

as JD/respondent had deposited full penalty amount in the case of Vivek Gupta amounting to six Lakh, Paras Verma amounting to Five Lakh and Ravi Kant amounting to Three Lakh which were duly received in the office of this Authority, whereas the 30%/part penalty amounting to Five Lakh in the case of Vidya Negi, One Lakh Fifty Thousand in the case of Godawari Bhardwaj, One Lakh Fifty Thousand in the case of Suresh Kumar Sharma, Ninety Thousand in the case of Aditi Rao, One Lakh Fifty Thousand in the case of Nisha Singh, three Lakh in the case of Narender Bhardwaj and Three Lakhs in the case of Jeetender Bhardwaj were deposited by the JD and the appeals were preferred by the JD before the Hon'ble Appellate Tribunal which were dismissed as withdrawn on 18.08.2023 with liberty to the appellant to raise all his pleas before the Authority. Subsequently, JD filed Misc. Applications in the matter of ongoing suo moto execution petitions with the Authority which have been registered as MA nos. **MA No.1-R2/21-2023** to **MA NO.1-R2/30-2023**. By way of these applications the respondent/JD prayed for reconsideration of the order on the following submissions made in the applications:

1. The JD has preferred the appeals before the Ld. Appellate Tribunal against the different orders passed by the Authority on 16.12.2020, 17.12.2020 & 22.12.2020 in all connected matters on the issue of penalty as was imposed by the Authority.
2. It was further stated that during the pendency of the appeals, the complainants/DH and Respondent/JD resolved their main issue amicably as per the directions passed by the Authority.
3. Further, it was averred in the appeals that the Authority exceeded its jurisdiction by imposing penalties under section 61 and 69 of RERD Act. The present case was treated as part bunch matters being one of complaint of other complaints decided by the Ld. Authority pertaining to the same project and also decided almost on the same lines but while imposing penalty under Section 61 of the RERD Act, 2016, the Ld. Authority has imposed separate penalties under Section 61 of the Act in each such case and imposed penalty which eventually collectively

been provided in the submitted chart. The cumulative total amount of the penalty has been shown as Rs.39,40,000/- in the said chart. On the basis of these submissions it was prayed that the penalty imposed in the project in question is more than 5% of the total cost of the project which is not sustainable in the eyes of law and liable to be set aside and the proceedings of suo moto execution petitions against the JD/Respondent may kindly be set aside.

2. Argument advanced

It was argued on behalf of the JD that the Authority imposed separate penalties under section 61 & 69 of the RERA Act, 2016 pertaining to the same project in each of the above mentioned case. It was further argued that the imposed penalty eventually collectively becomes more than 5% of the cost of the project which is the maximum limit as prescribed under the Act. The Ld. Counsel of the respondent/JD emphasized on the Para 8 of the order of the Hon'ble HP Real Estate Appellate Tribunal and submitted that in view of the said orders, the Authority can review its order and necessary amendments in the order can be done on the basis of plea raised by him.

The Authority asked the Ld. Counsel for Respondent/JD whether Section 39 of the RERD Act permits reconsideration/amending of its own order, which is reproduced here below:-

“Section 39. The Authority may, at any time within a period of two years from the date of the order made under this Act, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act:

Provided further that the Authority shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.”

and further asked the Ld. Counsel about the restriction imposed by the said Section on the Authority in reviewing/amending its orders. The Ld.

Counsel for Respondent/JD admitted that Section 39 of the Act ibid bars the Authority from reviewing/amending its orders. On the specific query of the Authority, the Ld. Counsel also agreed that the review of calculation of the penalty is not rectification, which otherwise is permitted by statute. The Ld. Counsel for Respondent/JD also admitted that he has withdrawn the appeals as is apparent from the orders of the Hon'ble HP Real Estate Appellate Tribunal.

The Authority also observed that the Para 8 of the order of the Hon'ble HP Real Estate Appellate Tribunal is suggestive in nature and the suggestion to raise the issues before the Authority has been accepted by the JD which led to the filing of these MAs.

3. Findings/Issues

Whether the Authority has the power to review its order and amendment of the same.

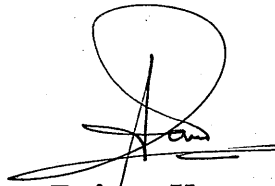
The Authority observes that relief sought by the JD/applicant is of the nature of review of its order and if allowed, the same shall result in change of the operative part of the orders of the Authority. Further, the Authority under section 39 of RERD Act, 2016 has the power to rectify clerical mistakes only apparent on the face of record and prayer made in the applications amounts to review of the final order pertaining to the issue of calculation of penalty. The RERD Act, 2016 does not entrust the power of review on the Authority. If the Legislature ever intended to entrust such powers upon the Authority the same would have been specifically provided in the Act itself, which otherwise is comprehensive and exhaustive. In fact the proviso 2 to section 39 categorically provides that the Authority "**shall not**" while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of the Act.

Thus, it is clear that the Authority lacks power to review/amend its order except rectification and the issue of recalculation of penalty is not

Thus, it is clear that the Authority lacks power to review/amend its order except rectification and the issue of recalculation of penalty is not a rectification but in the nature of review and such review or any amendment in the orders is not permissible under the provision of the RERD Act.

4. Directions

- a. Keeping in view of the above mentioned facts, this Authority has no power to review its order. Consequently, all the applications are disposed off.
- b. The JD/respondent promoter is directed to deposit the balance amount of penalty imposed within sixty days from the date of this order.
- c. The facts, circumstances, question of law and reliefs sought in all the applications are identical, therefore, the same are being decided by this common order.
- d. File be consigned to record room after uploading the order on the website.



Rajeev Verma
MEMBER