



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-14937-2024 (O&M)

Reserved on: 18.03.2025

Date of Decision : 24.04.2025

M/S VATIKA LIMITED

...Petitioner

V/S

UNION OF INDIA AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE H.S. GREWAL**

Present : Mr. Ashok Aggarwal, Senior Advocate and
Mr. Anand Chhibbar, Senior Advocate with
Mr. Vaibhav Sahni, Advocate and
Mr. Venket Rao, Advocate for the petitioner.

Mr. Satya Pal Jain, Addl. Solicitor General of India with
Mr. Shobit Phutela, Senior Panel Counsel
for the respondent(s)/Union of India.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Ms. Svaneel Jaswal, Addl. A.G. Haryana,
Mr. P.P. Chahar, Sr. DAG, Haryana,
Mr. Saurah Mago, DAG, Haryana,
Mr. Gaurav Bansal, DAG, Haryana and
Mr. Karan Jindal, Assistant A.G. Haryana.

Mr. Ankur Mittal, Advocate
Ms. Kushaldeep Kaur Manchanda, Advocate
Ms. Gurcharan Kaur, Advocate,
Mr. Sandeep Chabbra, Advocate and
Ms. Saanvi Singla, Advocate
for the respondent-RERA.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner has prayed for the issuance of a writ in the nature of Certiorari whereby it seeks the



quashing of the notification No.50/15/2024-5S(1) dated 11.05.2024 (Annexure P-1), issued by the Chief Secretary to Government, Haryana, thus on the ground that the said is patently illegal, arbitrary and is made *sub coloris officio*. A further prayer is made for staying the operation of the apposite notification till the final adjudication of the present writ petition.

2. The present petition is preferred by the petitioner whereby becomes challenged the validity of the subject notification dated 11.05.2024 (Annexure P-1) issued by respondent No.2, Chief Secretary to Government, Haryana, whereby respondent No.4-Adjudicating Officer, Haryana Real Estate Regulatory Authority, Gurugram (hereinafter referred to as 'the Adjudicatory Authority'), was vested with the powers of the Collector under the Haryana Land Revenue Act, 1887 (hereinafter referred to as 'the Act of 1887'), thus to execute the recovery certificates issued by the Haryana Real Estate Regulatory Authority (hereinafter referred to as 'HRERA').

3. The competent authorities under the HRERA by exercising the powers vested under Section 81 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act of 2016'), thus proceeded to delegate, the powers of execution of orders passed by them under Section 40 of the Act of 2016, rather vis-a-vis the Adjudicating Officers/Authorities concerned. The provisions of Section 81 of the Act of 2016 become extracted hereinafter.

"Section 81. Delegation.

The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to make regulations under section 85), as it may deem necessary."



4. Upon the thereunders occurrence of the apposite delegation(s) of powers, thus for therebys making executions of the orders passed by the HRERA Authorities, rather the Ld. Adjudicating Officer/Authority initiated the process of execution of the orders passed by the Authorities constituted under the Act of 2016. The said passed executable orders appertain to payment of interest, penalty and compensation. The (supra) passed orders are in terms of Section 40(1) of the Act of 2016, provisions whereof becomes extracted hereinafter, whereunders it becomes ordained, that the orders appertaining to payment of interest, penalty or compensation, thus are recoverable, as arrears of land revenue, rather from such promoter, allottee or real estate agent, but in such manner as may be prescribed. The conferment of the apposite powers upon the adjudicating officer/authority concerned, thus purportedly pursuant to the (supra) extracted provision, besides pursuant to the making of the impugned notification, thus is contended to be in violation of the provisions embodied in Section 40(1) of the Act of 2016.

5. Furthermore, it is contended that though it is envisaged in sub Section 1 of Section 40 of the Act of 2016, that those orders appertaining to levying of interest or penalty or compensation, as the case may be, respectively upon a promoter or an allottee or a real estate agent, thereupons all the (supra) becoming amenable to be recoverable as arrears of land revenue. However, reiteratedly it is contended that the impugned notification, thus makes contravention of the mandate enunciated in Section 40(1) of the Act of 2016.

“Section 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...”

6. Impugned notification becomes extracted hereinafter.

“No.50/15/2024-55(1)- In exercise of powers conferred by sections 10 and 27 of the Haryana Land Revenue Act, 1887 (Punjab Act No. 17 of 1887) read with section 83 of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016), the Governor of Haryana hereby vests adjudicating officer appointed under sub-section (1) of section 71 of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) with the powers of the Collector for execution of recovery warrants/certificates under the Haryana Land Revenue Act, 1887 (Punjab Act 17 of 1887) to execute the recovery certificates issued by the Haryana Real Estate Regulatory Authority at Gurugram and Panchkula within their respective jurisdiction as notified by the Haryana Government, Town and Country Planning Department, notification No. 1/92/2017-ITCP, dated the 18th February, 2020.

Further, all pending recoveries with the District Collectors in the State of Haryana initiated pursuant to the receipt of recovery certificates issued by the Haryana Real Estate Regulatory Authority at Gurugram and Panchkula shall stands transferred to the adjudicating officer of respective authority, from the date of publication of this notification in the official Gazette.”



7. In respect of the (supra) controversy a writ petition bearing No.CWP-7738 of 2022 titled “**M/s International Land Developers Private Limited Vs. Aditi Chauhan and Ors.**” became filed before this Court. This Court vide judgment dated 17.08.2022, thus decided the said writ petition whereby, it was held that the execution of orders appertaining to levies of interest, penalty and compensation, thus as decree(s) passed by the civil court, rather would be illegal and unlawful, primarily for the reason that the same is not in terms of Section 40(1) of the Act of 2016. This Court interpreted the entire provisions embodied in Section 40 of the Act of 2016 and further directed the Ld. Adjudicating Officer /Ld. Authority, to initiate the process qua execution of the appositely passed orders, thus in terms of the provisions of the Act of 1887 i.e. the Haryana Land Revenue Act, 1887. The State was further directed to make an appropriate amendment to Rule 27 of Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as ‘the Rules of 2017’). Moreover for making an effective enforcement of the appositely passed orders, the State was directed to permanently post a revenue official with every Ld. Authorities, as constituted under the Act of 2016, in the State of Haryana, thus for making executory recoveries or to confer powers of making executory recovery(ies) upon the officer(s) already posted with the Ld. Authorities. Relevant paragraphs of the judgment (supra) become extracted hereinafter.

“89. Coming then to the provisions contained within Section 40; very obviously sub-section (1) thereof pertains only to enforcement of an order directing payment of any interest or penalty or compensation, whether such order is passed by the Adjudicating Officer, the Regulatory Authority or the Appellate Tribunal; whereas sub-section (2) is a provision for enforcement of any order or



direction given by either the AO or the Authority or the Appellate Tribunal.

Therefore, any person as violates any direction or order issued even in respect of summoning such person etc., would be dealt with wholly under the provision of sub-section (2), with however the provision of subsection (1) to apply to an order pertaining to payment of interest, penalty or compensation as ordered by the AO/Authority/Appellate Tribunal.

Again, very obviously, sub-section (1) postulates that if any person fails to pay any interest or penalty or compensation imposed, it shall be recoverable from such person (whether a promoter, an allottee or a Real Estate agent) "in such manner as may be prescribed as an arrear of land revenue".

91. To repeat yet again, sub-section (1) of Section 40 stipulates that the manner of recovery of payment of interest, penalty and compensation, may be prescribed (by rules) for recovery as an arrear of land revenue and does not postulate any other method of such recovery; however sub-rule (1) of Rule 27 empowers the AO/Authority/Tribunal to enforce any order passed by it under Section 40 (without specifying any particular sub-section thereof), as if it were a decree or an order made by a civil court in a suit pending before it.

92 to 94 Xxx

95. Consequently, in order to try and ensure that the execution proceedings do not get delayed in the present case, we direct the Authority/the Adjudicating Officer to immediately take appropriate measures to get the recovery effected in such proceedings as arrears of land revenue (subject of course to any interim order passed by the Tribunal in any appeal that the petitioner may file after making the pre deposit necessary).

Upon such proceedings being initiated by the AO/Authority, the revenue officers/any other officers/officials and specifically the Collector concerned, as would be responsible for taking such proceedings to their logical conclusion (for realization of the sum due as per the execution proceedings as arrears of land revenue), would conclude such proceedings within a period of three months



from the date that such proceedings are received by the Collector/other revenue officers/officials.

It is made absolutely clear that if the said proceedings are not completed by the Collector/revenue officers and other officers/officials as have jurisdiction to do so, respondent no.3 herein would be within its right to take recourse to its remedy for violation of this order.

96. As regards a permanent solution to ensure compliance of what is stipulated in sub-section (1) of Section 40 of the Act, the respondent State Government of Haryana is directed to consider within a period of 4 months from today, an appropriate amendment in Rule 27 of the Rules, so as to ensure that any amount that is recoverable in terms of the said provision [Section 40(1)], is recovered within the shortest possible time; by way of either posting permanently a revenue official to each Regulatory Authority in Haryana as has been constituted under the provisions of the Act, empowered with the jurisdiction as would be necessary to be conferred upon him/her for recovery as arrears of land revenue, so that upon any execution proceedings being filed for giving effect to any recovery in terms of Section 40(1), the matters need not be referred to regular revenue Authorities and can be effectively dealt with immediately by the officer posted in the Authority itself for that purpose, (as has been conferred with such jurisdiction to carry out the procedure of recovery by way of arrears of land revenue).

Alternatively, the Government could also consider conferring powers of recovery under the relevant provisions of the Land Revenue Act, upon any officer already posted in the Regulatory Authority.”

8. The learned counsel for the petitioner submits, that this Court had specifically directed the State to consider making an amendment to Rule 27 of the Rules of 2017 or to permanently appoint a Revenue Officer with the Authority(ies) concerned, or if there is already a Revenue Officer deputed with the Authority, thereupon the said person(s) can become conferred with the powers to carry out the apposite recoveries, thus as



arrears of land revenue, through recouring the apposite provisions embodied under the Act of 1887. However, in the passing of the said directions on 17.08.2022, the learned Single Bench of this Court remained oblivious to the fact that the Rules of 2017, in the said regard were already on the statute book in the year 2017.

9. In purported utter variance to the (supra) directions passed by this Court, the State has bestowed the powers of the Revenue Officer upon the Ld. Adjudicating Officer/Authority concerned, who is/are but appointed under Section 71 of the Act of 2016 and who rather become vested with the apposite statutory powers and duties. Provisions of Section 71 of the Act of 2016 become extracted hereinafter.

“71. Power to adjudicate.—*(1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint, in consultation with the appropriate Government, one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard:*

Provided that any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986 (68 of 1986), on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.

(2) The application for adjudging compensation under sub-section (1), shall be dealt with by the adjudicating officer as expeditiously as possible and dispose of the same within a period of sixty days from the date of receipt of the application:



Provided that where any such application could not be disposed of within the said period of sixty days, the adjudicating officer shall record his reasons in writing for not disposing of the application within that period.

(3) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.

10. Definition of “adjudicating officer” is provided under Section 2(a) of the Act of 2016 and becomes extracted hereinafter.

2(a) “adjudicating officer” means the adjudicating officer appointed under sub-section (1) of section 71.

11. For the reasons to be assigned hereinafter the directions passed by the learned Bench of this Court are per incuriam the provisions as envisaged in Section 81 of the Act of 2016, per incuriam the contemplation(s) as envisaged in Section 40(1) of the Act of 2016, besides are per incuriam vis-a-vis the mandate encapsulated in Section 71 of the Act of 2016. Moreover for the further reason to be assigned hereinafter the impugned notification is in derogation of the mandate encapsulated in Rule 27 of the Rules of 2017, provisions whereof becomes extracted hereinafter.

“27. (1) Every order passed by the adjudicating officer or the Authority or the Appellate Tribunal, as the case may be, under the Act or rules and the regulation made thereunder, shall be enforced by an adjudicating officer of the Authority or Appellate Tribunal in the same manner as if it were a decree or an order made by a civil court in a suite pending therein; and it shall be lawful for the adjudicating

officer or the Authority or the Appellate Tribunal, as the case may be, in the event of its inability to execute the order, send such order to the civil court, to execute such order.

(2) The court may, for the purposes of compounding any offence punishable with imprisonment under the Act accept an amount as specified in the Table below:-

<i>Offence</i>	<i>Amount to be paid for compounding the offence</i>
<i>Punishable with imprisonment under sub section (2) of section 59.</i>	<i>five to ten percent of the estimated cost of the real estate project.</i>
<i>Punishable with imprisonment under section 64.</i>	<i>five to ten percent of the estimated cost of the real estate project.</i>
<i>Punishable with imprisonment under section 66.</i>	<i>five to ten percent of the estimated cost of the plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated.</i>
<i>Punishable with imprisonment under section 68.</i>	<i>five to ten percent of the estimated cost of the plot, apartment or building, as the case may be.</i>

12. Sub Section 1 of Section 40 of the Act of 2016, though creates a statutory mechanism for effectively ensuring the recovery(ies) of interest or penalty or compensation as become imposed upon the concerned. Moreover, the said provision(s) also make ordainments, thus for therebys effectively enforcing the orders respectively passed by the adjudicating officer/authority concerned, or by the regulatory authority, besides by the appellate authority concerned. Moreover, though the liability(ies) qua levyings of interest or penalty or compensation, may become respectively encumbered upon a promoter, an allottee or a real estate agent. In addition, though the jurisdiction to levy all (supra) upon the (supra), though does also become respectively vested, thus respectively in the regulatory authority or in the



appellate authority, and upon the adjudicating officer/authority concerned, but all the said imposed/levies penalties or compensation or interest are detailed therein to be recoverable as arrears of land revenue.

13. Though reiteratedly, thus a jurisdiction for effectively executing rather the respective levyings rather respectively of interest, penalty or compensation, but is a jurisdiction respectively vested in the regulatory authority or the appellate authority or in adjudicating officer/ authority, thus under a common theretos provision engrafted in sub Section 1 of Section 40 of the Act of 2016, besides as stated (supra) all (supra) are prescribed to be recoverable as arrears of land revenue.

14. In consequence, the jurisdiction which becomes vested in the regulatory authority or in the appellate authority, as become created under the Act of 2016, thus for imposing interest, penalty, rather respectively upon a promoter, allottee or a real estate agent, naturally stands, on a pedestal different from the foisting of jurisdiction in the adjudicating officer/ authority, to also do likewise, but only in respect of adjudging compensation in terms of Section 71 of the Act of 2016. The expanse of the jurisdiction vested in the regulatory authority or in the appellate authority, is in extenso detailed in Section 34, besides in Sections 59 to 70 of the Act of 2016, provisions whereof becomes extracted hereinafter.

“34. Functions of Authority.—The functions of the Authority shall include—

(a) to register and regulate real estate projects and real estate agents registered under this Act;

(b) to publish and maintain a website of records, for public viewing, of all real estate projects for which registration has been given, with such details as may be prescribed, including information provided in



the application for which registration has been granted;

(c) to maintain a database, on its website, for public viewing, and enter the names and photographs of promoters as defaulters including the project details, registration for which has been revoked or have been penalised under this Act, with reasons therefor, for access to the general public;

(d) to maintain a database, on its website, for public viewing, and enter the names and photographs of real estate agents who have applied and registered under this Act, with such details as may be prescribed, including those whose registration has been rejected or revoked;

(e) to fix through regulations for each areas under its jurisdiction the standard fees to be levied on the allottees or the promoter or the real estate agent, as the case may be;

(f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;

(g) to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act;

(h) to perform such other functions as may be entrusted to the Authority by the appropriate Government as may be necessary to carry out the provisions of this Act.

35 to 58 xxx

59. Punishment for non registration under section 3.—(1) *If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten per cent. of the estimated cost of the real estate project as determined by the Authority.*

(2) If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent. of the estimated cost of the real estate project, or with both.

60. Penalty for contravention of section 4.—*If any promoter provides false information or contravenes the provisions of section 4, he shall be liable to a penalty which may extend up to five per cent.*



of the estimated cost of the real estate project, as determined by the Authority.

61. Penalty for contravention of other provisions of this Act.

—If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project as determined by the Authority.

62. Penalty for non registration and contravention under sections 9 and 10.*—If any real estate agent fails to comply with or contravenes the provisions of section 9 or section 10, he shall be liable to a penalty of ten thousand rupees for every day during which such default continues, which may cumulatively extend up to five per cent. of the cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated as determined by the Authority.*

63. Penalty for failure to comply with orders of Authority by promoter.*—If any promoter, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of the real estate project as determined by the Authority.*

64. Penalty for failure to comply with orders of Appellate Tribunal by promoter.*—If any promoter, who fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to three years or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the estimated cost of the real estate project, or with both.*

65. Penalty for failure to comply with orders of Authority by real estate agent.*—If any real estate agent, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of plot, apartment or building, as the case may be, of*



the real estate project, for which the sale or purchase has been facilitated and as determined by the Authority.

66. Penalty for failure to comply with orders of Appellate Tribunal by real estate agent.—*If any real estate agent, who fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the estimated cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated, or with both.*

67. Penalty for failure to comply with orders of Authority by allottee.—*If any allottee, who fails to comply with, or contravenes any of the orders, decisions or directions of the Authority he shall be liable to a penalty for the period during which such default continues, which may cumulatively extend up to five per cent. of the plot, apartment or building cost, as the case may be, as determined by the Authority.*

68. Penalty for failure to comply with orders of Appellate Tribunal by allottee.—*If any allottee, who fails to comply with, or contravenes any of the orders or directions of the Appellate Tribunal, as the case may be, he shall be punishable with imprisonment for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the plot, apartment or building cost, as the case may be, or with both.*

69. Offences by companies.—*(1) Where an Offence under this Act has been committed by a company, every person who, at the time, the offence was committed was in charge of, or was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*

Provided that nothing contained in this sub-section, shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such



offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

(a) “company” means any body corporate and includes a firm, or other association of individuals; and

(b) “director” in relation to a firm, means a partner in the firm.

70. Compounding of offences.—*Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), if any person is punished with imprisonment under this Act, the punishment may, either before or after the institution of the prosecution, be compounded by the court on such terms and conditions and on payment of such sums as may be prescribed:*

Provided that the sum prescribed shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded.”

15. A reading of the hereinabove provision(s), does unravel, that therebys a plenitude of jurisdiction becoming foisted respectively in the regulatory authority or in the appellate authority. Tritely also the adjudicatory powers envisaged in the (supra) provisions, appears to be at par with the adjudicatory jurisdiction invested in the adjudicating officer/authority, through the mandate enclosed in Section 71 of the Act of 2016.

16. A closest reading of hereinabove extracted Section 71 of the Act of 2016 reveals, that the adjudicating officer/authority, rather becoming enjoined, to hold an enquiry for adjudging compensation under Sections 12,



14, 18 and 19 of the Act of 2016, provisions whereof become extracted hereinafter, whereupon obviously he has also an expansive jurisdiction but limited to adjudging compensation.

“12. Obligations of promoter regarding veracity of the advertisement or prospectus.—*Where any person makes an advance or a deposit on the basis of the information contained in the notice, advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:*

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.

13. XXX

14. Adherence to sanctioned plans and project specifications by the promoter.—*(1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.*

(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—

(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without



the previous consent of that person:

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

Explanation.—For the purpose of this clause, “minor additions or alterations” excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation.—For the purpose of this clause, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the



aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

15 to 17. XXX

18. Return of amount and compensation.—(1) *If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—*

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

19. Rights and duties of allottees.—(1) *The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale*



signed with the promoter.

(2) The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.

(3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (l) of sub-section (2) of section 4.

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

(5) The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the promoter.

(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

(8) The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced



when mutually agreed to between the promoter and such allottee.

(9) Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same.

(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.

(11) Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.”

17. Therefore, if vis-a-vis any adjudicating officer/authority, thus an adjudicatory jurisdiction, is bestowed to assess compensation to an aggrieved, thereby since Section 40(1) of the Act of 2016, speaks that apart, from interest or penalty being recoverable as arrears of land revenue, but also the assessed compensation being also likewise recoverable. Resultantly, Section 40(1) creates a common executory quasi judicial mechanism both for thereby effectively ensuring the recovery of interest or penalty as well as for ensuring the recovery of compensation.

18. Tritely though an executory mechanism for effectively enforcing the adjudged compensation amount, rather becomes envisaged in sub Section 1 of Section 40 of the Act of 2016, which is but similar to the execution of orders of penalties or interest as become passed respectively by regulatory authority or by the appellate authority. However, yet there are separately conferred functional adjudicatory fields rather respectively upon the regulatory authority or upon the appellate authority besides upon the adjudicating officers/ authorities concerned.



19. In other words, the adjudicatory scopes of all (supra) are different, but the adjudicated upon is, but is contemplated in sub Section 1 of Section 40 of the Act of 2016, to be effectively executable, through a common recourse thereto, becoming made by the recipient of favourable order(s), as become respectively passed by the regulatory authority or by the appellate authorities or the adjudicating officers/authorities, latter whereof exercise(s) jurisdiction under Section 71 of the Act of 2016.

20. Therefore, this Court is required to be searching for those provisions as envisaged in the relevant statute(s) whereby there is permissibility for recovering the (supra) levies, as arrears of land revenue. The said provision become embodied in Section 67 of the Act of 1887, provisions whereof become extracted hereinafter.

“67. Processes for recovery of arrears.-- Subject to the other provisions of this Act, an arrear of land-revenue may be recovered by any one or more of the following processes, namely: -

(a) by service of writ of demand on the defaulter;

(b) by arrest and detention of his person;

(c) by distress and sale of his movable property and uncut or ungathered crops;

(d) by transfer of the holding in respect of which the arrear is due;

(e) by attachment of the estate or holding in respect of which the arrear is due;

(f) by annulment of the assessment of that estate or holding;

(g) by sale of that estate or holding;

(h) by proceedings against other immovable property of the defaulter.”



21. A perusal of the said provision details the invokable processes for effectively recovering the apposite arrears of land revenue.

22. The envisaged therein invokable remedies for ensuring effective recoveries of arrears of land revenue, thus encompasses the power to arrest and detain the defaulter, to attach and sell his movable property and/or uncut or ungathered crops, besides envisage the makings of attachment of the defaulter's estate or holding in respect of which the arrear is due. As such, the thereunders prescribed remedies are expansive and work as a sufficient deterrent against the person concerned, upon whom the (supra) levies are respectively fastened, thus respectively by the regulatory authority or the appellate authority or by the adjudicating officer/authority, rather against violations being made qua the apposite adjudication becoming rendered against it/him/her.

23. It appears that in terms of Section 27 of the Act of 1887, provisions whereof becomes extracted hereinafter, the impugned notification has been issued. Moreover, as stated (supra) it also appears that in terms of Section 81 of the Act of 2016, the delegation of powers of execution have been made vis-a-vis the adjudicating officer/ authority.

“27. Conferment of powers by Revenue-officer.-- (1) The 5(State Government) may by notification confer on any person:--

(a) all or any of the powers of a Financial Commissioner, Commissioner or Collector under this Act; or

(b) all or any of the powers with which an Assistant Collector may be invested thereunder, and may by notification withdraw any powers so conferred.

(2) A person on whom powers are conferred under sub-section (1) shall exercise those powers within such local limits and in such



classes of cases as the '(State Government) may direct, and, except as otherwise directed by the 2(State Government), shall for all purposes connected with the exercise thereof be deemed to be a Financial Commissioner, Commissioner, Collector or Assistant Collector, as the case may be.

(3) In any of the powers of a Collector, under this Act are conferred on an Assistant Collector, they shall, unless the 3[State Government] by special order otherwise directs, be exercised by him subject to the control of the Collector.”

24. For the reasons to be assigned hereinafter neither the notification is valid nor any purported delegation as has been made vis-a-vis the adjudicating officer/authority, thus in terms of Section 81 of the Act of 2016, or in terms of Section 27 of the Act 1887, rather is valid.

25. The primary reason for stating so immediately stems, from the factum, that the adjudicating officer/authority also exercises the apposite adjudicatory jurisdiction under Section 40(1) of the Act of 2016. Moreover, when the scope of the adjudicatory jurisdiction bestowed upon the regulatory authorities concerned, or upon the appellate authority concerned, as constituted under the Act of 2016, but is different from the exercisable adjudicatory jurisdiction conferred upon the adjudicating officer/ authority concerned, inasmuch as, the former(s) exercising jurisdiction, thus covering the field of levyings of interest and penalty, upon, the concerned, whereas, the last exercising jurisdiction under Section 71 of the Act of 2016, thus to assess compensation in terms of Section 40(1) of the Act of 2016.

26. Though there is a common executory remedy created under sub Section 1 of Section 40 of the Act of 2016, vis-a-vis all (supra), thus for each (supra) effectively executing/enforcing the adjudicated lis'. Nonetheless the said commonality qua foisting of executory jurisdiction, upon (supra) but



cannot be extended, to thus also empower the adjudicating officer/authority rather to execute orders appertaining to levying of interest and penalty upon the concerned, as become respectively passed by the regulatory authority and by the appellate authority concerned. Since the adjudicatory jurisdiction in respect of levy of interest and penalty becomes conferred upon the regulatory authorities or upon the appellate authorities, thereby the powers of executing the same is also to be conferred upon the (supra) as is done through sub Section 1 of Section 40 of the Act of 2016, and is not required to be snatched from them nor is to be conferred upon the adjudicating officer/authority.

27. More so, when there is no such apposite explicitly spoken apposite extension either in sub Section 1 of Section 40 of the Act of 2016 or in any other statutory provision embodied in the Act of 2016, whereby the adjudicated lis' appertaining to levy of penalty and interest upon the concerned, as made by the regulatory authority concerned, or the appellate authority concerned, thus is permitted to be executed by the adjudicating officer/authority.

28. If there is no explicit statutory conferment of any executory mechanism, to the said extent, thereby the conferments thereof, upon the adjudicating officer/authority, whereby the adjudicating officer/ authority becomes empowered to execute the levies, appertaining to penalty and interest, as become appositely fastened by the regulatory authority or by the appellate authority concerned. Resultantly necessarily thereby, the said conferment of executory jurisdiction qua the (supra) vis-a-vis the (supra) levies, but would be an ill conferment thereof, as has been done through the



passing of the impugned notification. Reiteratedly in sequel, the said notification is vitiated. If the said is permitted to be done therebys there would be conferment of jurisdiction upon the adjudicating officer/ authority, despite the same not becoming explicitly envisaged in the statute.

29. In consequence, the impugned notification, thus is in derogation of the explicit statutory adjudicatory jurisdiction vested, respectively in the regulatory authorities and in the appellate authority concerned, besides breaches the affiliated thereto foisting of executory jurisdiction upon the (supra).

30. Even if assumingly though there is through the purported invocation of the mandate enclosed in Section 81 of the Act of 2016, thus a purported delegation of powers to the adjudicating officer/authority concerned. However even the said provision, was not recoursesable, especially when for all the (supra) stated reasons, rather therebys, it would make an open rife conflict, rather with the specifically statutorily earmarked fields of adjudication, thus respectively upon the regulatory authorities or the appellate authority concerned, besides qua the adjudicating officer/authority. As such, the orders passed by the regulatory authorities concerned, and the appellate authority concerned, as become constituted under the Act of 2016, but cannot be permitted to be executed by the adjudicating officer/ authority concerned, as therebys there would be an impermissible vestment of executory jurisdiction in the adjudicating officer/ authority, which otherwise is not explicitly pronounced to be so conferred upon him. Resultantly, the provisions of Section 81 of the Act of 2016, but cannot be extended to reach a scenario wherebys therethroughs executory jurisdiction, which has not



been specifically invested in the adjudicating officer/ authority, but becomes conferred upon the adjudicating officer/ authority concerned.

31. Though, it appears that the mandate enclosed in Section 27 of the Act of 1887 whereby the thereunders conferred exercisable jurisdiction, thus can be conferred upon “any person”, within the ambit whereof, thus the adjudicating officer, rather becomes contended to fall. However, even the said argument pales into insignificance. Significantly in the wake of this Court, thus making the hereinabove inference, whereby this Court has stated that when there are different adjudicatory fields, respectively endowed vis-a-vis the regulatory authority(ies), the appellate authority and the adjudicating officer/ authority, besides when the adjudications respectively made by them are but obviously to be separately executable by them. Therefore, when it has also been stated hereinabove, that the power to execute the orders passed by the regulatory authority(ies) and those passed by the appellate authority(ies), thus is vested in the (supra), than in the adjudicating officer/ authority, who also has different fields of adjudication and also has powers’ to execute the verdicts passed by (supra). Therefore, when it has also been stated hereinabove, that there cannot be any co-mingling of separately created adjudicatory fields, thereby but obviously there cannot be any co-mingling of separately foisted executory jurisdiction(s) respectively upon the (supra). In sequel, the said argument is rejected.

32. The direction(s) (supra) passed by the learned Single Bench of this Court are also to the considered mind of this Court, thus per incuriam

the provisions embodied in Rule 27 of the Rules of 2017, provisions whereof are extracted hereinabove, and are re-extracted hereinafter.

“**27.** (1) Every order passed by the adjudicating officer or the Authority or the Appellate Tribunal, as the case may be, under the Act or rules and the regulation made thereunder, shall be enforced by an adjudicating officer of the Authority or Appellate Tribunal in the same manner as if it were a decree or an order made by a civil court in a suite pending therein; and it shall be lawful for the adjudicating officer or the Authority or the Appellate Tribunal, as the case may be, in the event of its inability to execute the order, send such order to the civil court, to execute such order.

(2) The court may, for the purposes of compounding any offence punishable with imprisonment under the Act accept an amount as specified in the Table below:-

Offence	Amount to be paid for compounding the offence
<i>Punishable with imprisonment under sub section (2) of section 59.</i>	<i>five to ten percent of the estimated cost of the real estate project.</i>
<i>Punishable with imprisonment under section 64.</i>	<i>five to ten percent of the estimated cost of the real estate project.</i>
<i>Punishable with imprisonment under section 66.</i>	<i>five to ten percent of the estimated cost of the plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated.</i>
<i>Punishable with imprisonment under section 68.</i>	<i>five to ten percent of the estimated cost of the plot, apartment or building, as the case may be.</i>

33. Since a closest reading of the above extracted provisions also reveals, that though the power of ensuring the apposite executions, becomes respectively conferred upon the adjudicating officer/authority or the regulatory authority or the appellate tribunal, thereby too, when each of the (supra) enjoy(s) separate powers to execute the respectively passed orders,



which become so passed, through each exercising separately envisaged adjudicatory fields, thereby there cannot be any coalescing of the apposite executory jurisdictions, as has been untenably created, through the passing of the impugned notification, and also by the making of the verdict by the learned Single Bench of this Court.

34. Furthermore, the learned Single Bench of this Court, also fell in error qua the adjudicated lis', respectively by the regulatory authority, by the appellate authority, and by the adjudicating officer/authority, rather cannot become enforced alike the decree of a civil court, especially since thereby the learned Single Bench of this Court, but has militated against the mandate spoken in Rule 27 of the Rules of 2017. Since therein it is explicitly enunciated that the adjudicated lis' can be effectively executed as a decree of the civil court, besides obviously as arrears of land revenue. Since the decree of a civil court is executable in the manner envisaged in the (supra) extracted provisions carried in Section 67 of the Act of 1887, therefore, the recoverable arrears of land revenue, thus can also be ensured to be recovered in the contemplated therein manner.

35. In aftermath, there is merit in the instant writ petition, and, the same is allowed. Resultantly, the impugned notification dated 11.05.2024 (Annexure P-1) is hereby quashed and set aside.

36. However, it is clarified that the orders respectively passed by the regulatory authority or by the appellate authority or by the adjudicating officer/authority, as created under the Act of 2016, shall become separately executed by them, through the apposite application(s) in terms of Section 40(1) of the Act of 2016, becoming filed before each of the (supra),



whereafter in case the levies imposed upon the concerned, if remained undeposited, thus subsequently, on the filed execution application, rather before each, thus they shall be recovered as arrears of land revenue in terms of Rule 27 of the Rules of 2017, besides in terms of Section 67 of the Act of 1887. Moreover in doing so all (supra) shall ensure that the apposite orders are executed in the same manner, as decrees rendered by civil court of competent jurisdiction, thus are executed.

(SURESHWAR THAKUR)
JUDGE

24.04.2025

(H.S. GREWAL)
JUDGE

Ithlesh

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No