

**REAL ESTATE REGULATORY AUTHORITY, BIHAR  
Before the Bench of Mr. Ved Prakash, Senior Legal  
Consultant**

**Exe. Case No - 255/2022  
RERA/CC/1119/2021**

**(1) Mr. Murlidhar Singh (2) Mrs. Kamini Singh ....Executant(s)**

**Vs.**

**M/s Singh Engicon Pvt. Ltd.through Mr. Ranjan Kumar, Managing Director ....Respondent**

**For complainant/Executant(s) : Shri Amit Singh (Adv.)  
For respondent : Shri Punit Sidharth (Adv.)**

**With**

**Exe. Case No - 443/2022  
RERA/CC/ 1119/2021**

**M/s Singh Engicon Pvt. Ltd. Through Mr. Ranjan Kumar, Managing Director ....Executant(s)**

**Vs.**

**(1) Mr. Murlidhar Singh (2) Mrs. Kamini Singh ....Respondent**

**For complainant/Executant(s) : Shri Punit Sidharth (Adv.)  
For the respondent : Shri Amit Singh (Adv.)**

**Project : Crystal Apex**

**17.03.2023**

**06.04.2023**

**O R D E R**

Both the above Execution Cases have arisen out of the same order dated 05.05.2022 passed by the Hon'ble Chairman in RERA/CC/1119/2021, whereby and whereunder the Hon'ble Chairman has directed that if the promoter does not offer unsold Flat to the complainants, they are bound to refund the deposits

along with applicable interest. It was further directed that the respondent company and their Director shall make refund of the entire principal amount of Rs. 69,50,000/- along with interest on such amount at the rate of Marginal Cost of Fund based on Lending Rate (for short, MCLR) of SBI, as applicable for three years or more plus 4 % from the date of taking payment till the refund, within 60 days of that order.

2. Since both the cases are arising out, as stated above, of the same order of the Hon'ble Chairman, so the disputes involved between the parties are being decided by this common order.

3. The case of the complainants/executants, Murlidhar Singh and Kamini Singh, in nut-shell, is that the respondent/ promoter have, with a malafideintention, opted to deny compliance of order dated 05.05.2022 passed by the Hon'ble Chairman as if they have no fear of law in spite of the fact that they were directed to refund the entire principal amount along with interest within 60 days of the order. It is further case of the complainants/executants that due to latches on the part of promoter, these executants have suffered heavy financial loss as well as acute mental and physical pain. Hence, the order dated 05.05.2022 may be executed against the respondent/promoter.

4. On the other hand, the executants of other Execution Case No. 443/2022 have made the similar allegations against the complainants, Shri Murlidhar Singh and Smt. Kamini Singh that they are intentionally and with ill motive creating hurdle in implementation of the order dated 05.05.2022 passed by the Hon'ble Chairman in RERA/CC/1119/2021. It is the further case of the executants of Exe.Case No. 443/2022 that all the

allegations of the complainants were rejected by the Hon'ble Chairman. The Hon'ble Chairman has held that the complainants were at fault when they have not made full payment. Their assertions that their Flat was not ready has also not been backed by any other evidence, except the report by the SBI. It was further observed that the respondent/promoter were entitled to cancel the allotment in accordance with the terms of agreement under section 11 (5) of the Act. The allegations of delay or deliberate latches or shortcomings on the part of the respondents have not been established and as such, the claim of handing over possession after execution of sale deed in respect of the said Flat was held to be devoid of any merit and dismissing the said complainant case directed to refund the entire principal amount along with interest. It is the further case that the respondent/promoter have been trying their level best to request the complainants to get the order dated 05.05.2022 implemented in its true letter and spirit, but the complainants have been playing dirty tricks with mala fide intention to escape from implementation of the same. On 14.05.2022, the respondent/promoter informed the complainants that their cheque was ready and TDS has already been deposited through challan no. 01002 by the respondent/promoter to the concerned Authority and requested them to collect the cheque at the earliest. The Flat in question has been mortgaged by the complainants with their Bank for house loan. Non-cancellation of registered agreement dated 09.05.2013 with respect to the Flat between the complainants and the respondent/promoter and non-issuance of NOC by the complainant's bank was creating hurdle to officially

register the Flat in question in new buyer's name. If there is no registered cancellation and no NOC issued by the Bank, it shall be impossible for the respondent/promoter to get the Flat officially registered in new buyer's name. The act on omission on the part of the complainants caused the failure of compliance of the order dated 05.05.2022. In the light of evasive attitude and ill design of the complainants, the respondents had no option but to file the execution case for compliance of the order dated 05.05.2022. It is further case that the complainants for the reasons best known to them have been demanding money as per their whims and fancies on some imaginary calculation, which is clearly against the order dated 05.05.2022.

5. The complainants have been considering MCLR rate as on 15.05.2022 instead of average of three years, as directed by the Hon'ble Chairman for the purpose of calculation of refund of principal amount. The MCLR has to be considered for the average of three years and not the highest or lowest rate in three years. The complainants are claiming Tax refund on amount paid by them from the respondent/promoter. The complainants who are demanding Tax refund should rather refer to section 54 of GST 2017. Hence, the complainants may be directed to comply the order dated 05.05.2022 and if they are not ready, a penalty may be imposed on them for creating hurdle in implementation of the above order of the Hon'ble Chairman.

6. Heard learned counsels for both the parties at length.

7. The Hon'ble Chairman, as discussed above, has observed that the respondent/promoter were entitled to cancel the allotment in accordance with terms of agreement under section

11 (5) of the Act. The allegations of delay or deliberate latches or shortcomings on the part of the respondent/promoter have not been established and as such, the claim of handing over possession after execution of sale deed in respect of this Flat is devoid of any merit. It has been further observed in the order that both the promoter and complainants can arrive at a mutually acceptable solution, if the promoter wishes to offer one of the unsold Flats for sale. However, no direction can be given on this issue. It was further observed that if the promoter does not offer unsold Flat to the complainants, as suggested above, they are bound to refund the deposits along with applicable interest. The Hon'ble Chairman has directed the respondent company through its Director to refund the entire principal amount Rs. 69,50,000/- along with interest on such amount @ MCLR of SBI, as applicable for three years or more plus 4 % from the date of taking the payment till the refund within 60 days of the order.

8. In the present case, the respondent/promoter have not offered one of the unsold Flats to the complainants, as mutual solution could not come out. Hence, the matter of delivery of possession of unsold Flat to the complainants/ executants comes to an end.

9. Now, in the light of the order of the Hon'ble Chairman, the respondent/promoter have to refund the entire principal amount along with interest at the rate of MCLR of SBI, as applicable for three years or more plus 4 % from the date of taking the payment till the refund. The Hon'ble Chairman has discussed the principal amount as Rs. 69,50,000/-, but both the parties have admitted that the complainants have paid Rs. 70,55,000/- as principal

amount to the respondent/promoter. Hence, it is clearly established that the respondent/promoter have to refund the principal amount to the tune of Rs. 70,55,000/- to the complainants/executants.

10. The respondent/promoter have also to pay interest on the principal amount of Rs. 70,55,000/- as per the above order of the Hon'ble Chairman. The complainants have calculated interest at the rate of 8.35 % plus 4 % totaling to 12.35% on the principal amount of Rs. 70,55,000/- On the other hand, the respondent/promoter have calculated interest at the rate of MCLR 7.17% plus 4 % totaling to 11.17 % on the principal amount of Rs. 70,55,000/- For calculating the MCLR of SBI, the respondent/promoter have taken the average of three years as they have stated that it should not be highest or lowest rate in three years, but in my mind, the application of rates of interest for calculation from both sides are incorrect.

11. The executing court cannot go behind the decree. It must take the decree as it stands and execute it according to its terms. It has no power to vary or modify the terms. It has also no power to question its legality or correctness. This is based on the principle that a proceeding to enforce the judgment is collateral to the judgment, and therefore, no inquiry into its regularity or correctness can be permitted in such proceeding.

12. In the present matter, neither the Hon'ble Chairman has passed order for application of average rate of interest of MCLR for three years nor to implement the rate of MCLR of other date. Hence, this Bench has no option but to apply the rate of interest of MCLR, as applicable on the date of order i.e. 05.05.2022.

Therefore, the rate of interest of (MCLR) of SBI for three years on the date of order i.e. 05.05.2022 has to be implemented, which was 7.4 %. After 4% is added, it will come to 11.4 %. Hence, the rate of interest for calculation on principal amount of Rs. 70,55,000/- shall be 11.4 %. Accordingly, on calculation, the interest, till date, on the principal amount of Rs. 70,55,000/- comes to the tune of Rs. 67,50,576/-. The respondent/promoter have to pay the said interest amount of Rs. 67,50.576/-along with principal amount of Rs. 70,55,000/-to the complainants/executants.

13. In view of what has been discussed above and also in the light of above order of the Hon'ble Chairman dated 05.05.2022, the respondent/promoter are directed to refund the principal amount of Rs. 70,55,000/- and also to pay the interest amount of Rs. 67,50,576/- including the deposited TDS amount in Bank to the complainants/executants. At the same time, the executants/complainants are also directed to cooperate and to take part in cancellation of registered agreement for sale dated 09.05.2013 and to get the NOC from the Bank, where the complainants have mortgaged the concerned Flat for getting the loan. If the complainants would avoid to cooperate in the aforesaid proceedings, then after expiry of stipulated period coercive measure including cost would be imposed against the complainants/executants and till then, the matter shall be kept open.

14. The application of the same interest i.e 11.4% shall continue till the principal amount is refunded by the respondent/promoter to the complainants.

15. Put up this case on 11.05.2023 for hearing, by which date the order must be complied with.

Sd/-

**(Ved Prakash)**

Senior Legal Consultant

RERA, Bihar

06.04.2023