

Legal Problems

Challenges and Hindrances in Executing the Order Passed by the Real Estate Regulatory Authority

The enactment of the Real Estate (Regulation and Development) Act, 2016 was intended to change the manner in which disputes between promoters and allottees are resolved. The effectiveness of any adjudicatory mechanism ultimately depends not merely upon the ability to pass an order, but also upon the ability to secure compliance with and execute that order. When an allottee files a case before the Real Estate Regulatory Authority or Adjudicating Officer for refund of money or compensation, after a prolonged hearing, an order is passed by the authority or adjudicating officer and then, the real challenge comes before the authority and before adjudicating officer to get its order executed. Section 40(1) of the Act contemplates recovery of interest, penalty, or compensation as arrears of land revenue. *Section 40(1) of the Act reads as under: -*

40(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.*

Yet, in actual implementation, RERA Authority, Collector, District Administration, Police Authorities, Revenue Authorities, and Civil Courts

may each have a different understanding regarding their respective powers and responsibilities. Bailable warrants are issued by the RERA Authority, but they remain unexecuted or simply the defaulter gets bail at the police station level very easily. Information about the execution of warrants is rarely received. The result can be delay, duplication of proceedings, and uncertainties. Section 40(2) of the Act, on the other hand, deals with an order or direction requiring a person to do an act or refrain from doing an act.

Section 40(2) of the Act reads as under: -

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.

So, two different situations arise:

1. Monetary recovery
2. Enforcement of substantive directives

Rule 25 of the Jharkhand Real Estate (Regulation and Development) Rules, 2017 deals with the manner of implementation of orders, directions, or decisions of the adjudicating officer, the authority, or the appellate authority.

Section 24 of the JHARERA Rules, 2017 states that the recovery of amount such as interest, penalty, or compensation shall be recovered as arrears of

land revenue in the manner provided under applicable local laws. In Jharkhand, Arrears of land revenue are recovered under the Bihar and Odisha Public Demands Recovery Act 1914. Meaning thereby, the authority has to file certificate cases before the Deputy Commissioner for realization of interest, penalty, or compensation as ordered by the authority or adjudicating officer. The ball comes in the court of the revenue authority, where virtually no progress is done despite the lapse of time. The authority finds itself handicapped to giving actual relief to the allottee. If the order has been passed regarding a direction to a person to do an act or refrain from doing an act, under Section 40(2) of the Act and Rule 25 of the JHARERA Rules, 2017, It is stipulated that the order shall be enforced as if it were a decree or order made by the principal civil court in a suit pending therein. And it shall be lawful for the adjudicating officer, regulatory authority, or appellate tribunal, in the event of its inability to execute the order, send such order to the principal civil court to execute such order. Civil courts are burdened with a large number of cases, and if the order passed by the authority is sent to the civil court for its execution, huge delay is caused because fresh proceedings initiate before the civil court. Section 35(2) of the Act stipulates that the authority shall have the same powers as are vested in a civil court under the provisions of the CPC. If the authority takes up the

matter to get its order executed, it has to face a lot of problems because, in a civil proceeding, the decree-holder of the case is required to furnish details of the property of the judgment-debtor for attachment of the property. If the judgment-debtor refuses to obey the order passed by the executing court. In proceedings before the regulatory authority, allottees are handicapped to provide details of the property of the developer. A serious situation arises if the project of the developer is not registered with the authority, because the authority is unable to assess what properties the developer has in its possession. In such a situation, it becomes very difficult for the authority to proceed against a defaulting developer to get the order executed which is passed against him. If the project is registered with the regulatory authority, then the authority finds itself in a comfortable position to proceed against the defaulter developer.

The execution of the order passed by the adjudicating officer, regulatory authority, or appellate authority is a real challenge which is being faced by the authority. If the regulatory authority is vested with more power to get its order executed, the situation will certainly improve. If the power given to district consumer forums to get its orders executed is given to the Regulatory Authority, certainly orders can be enforced at the earliest.

The provision is hereby provided which is as follows –

Section 72: - Penalty for non-compliance of order. — (1) *Whoever fails to comply with any order made by the District Commission or the State Commission or the National Commission, as the case may be, shall be punishable with imprisonment for a term which shall not be less than one month, but which may extend to three years, or with fine, which shall not be less than twenty-five thousand rupees, but which may extend to one lakh rupees, or with both.*

The gist of the provision is that —

1. **Imprisonment:** *Breaking the order carries a prison sentence of 1 month to 3 years.*
2. **Fines:** *The fine ranges from ₹25,000 to ₹1,00,000.*
3. **Both:** *The court can apply both prison time and a fine.*
4. **Magistrate Powers:** *The consumer commission acts like a Judicial Magistrate of the First Class to try these offenses in a fast-track summary trial.*