

# Metrozone Phase 4 Apartment Buyers ... vs Senthil Kumar & Ors on 22 May, 2024

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
CM(M) 2567/2024  
METROZONE PHASE 4 APARTMENT BUYERS ASSOC

Through: Mr. Arvind Naya  
Malvika Kapila  
Joshi, Ms. Tanw  
Shreya Chugh, A

versus

SENTHIL KUMAR & ORS.

Through: Mr. Prateek K.  
Sreekar Aechuri

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

OR

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CM APPL. 28620/2024- Stay

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1. The present application under Section 151 of the Code of Civil Procedure, 1908 [in short "CPC"] has been filed by the petitioner seeking stay of the operation, effect, execution and implementation of the impugned order dated 24.04.2024 and 14.02.2024 passed by the learned National Consumer Disputes Redressal Commission, New Delhi ("NCDRC") in Execution Application No. 243/2023 in Consumer Complaint No. 788 of 2018.

2. Before delving into the facts at hand, Mr. S. Vasudevan, learned counsel submits that he wants to appear as intervenor, however, he further This is a digitally signed order.

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3. Now, an elucidation of facts for the disposal of the application:-

4. The petitioner is an association duly registered under the Tamil Nadu Societies Registration Act, 1975 and represents a collective of members and allottees associated with the Phase IV of the "Metrozone" Project undertaken by Ozone Projects Pvt. Ltd. (respondent no. 3) in Chennai in 2010. Respondent no. 3 is constructing a real estate project known as "Metrozone" comprising of several

towers in four phases to be developed in phased manner. In the year 2010, respondent no. 3 launched „Phase IV of the Metrozone Project and started allotting apartments to various homebuyers. However, it failed to deliver timely possession of units to allottees of the Phase-IV Project of Metrozone. Consequently, the aggrieved members of the Petitioner Association found themselves compelled to seek redressal through filing complaints under Tamil Nadu Real Estate (Regulation and Development) Act, 2016 ("TNRERA") against the respondent No. 3, seeking compensation for the inordinate delay experienced in handing over the possession of the units.

5. On 07.07.2021, the members constituting the petitioner association formally approached the TNRERA, urging the regulatory body to proactively oversee the progress of the ongoing construction activities pertaining to the Metrozone Phase IV project. As a response to these concerns, TNRERA, issued directives mandating periodic review meetings to be conducted every two months until such time that the project construction reaches completion and possession can be handed over to the members of the petitioner association.

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6. Despite the intervention and oversight provided by TNRERA through the stipulation of periodic review meetings, it became evident over a period of six months that insufficient progress had been made in advancing the construction work within the Metrozone Phase IV project. Consequently, in response to this stagnation, the TNRERA directed Respondent No. 3 to formulate a comprehensive strategy aimed at expediting the completion of the project. Following extensive deliberations and negotiations between the involved parties, a draft Memorandum of Understanding (MOU) was jointly submitted by the Petitioner and Respondent No. 3 to TNRERA for scrutiny and approval. Subsequently, on 28.02.2022, TNRERA not only granted its approval for the MOU but also mandated Respondent No. 3 to establish a dedicated "non-lien escrow account" earmarked exclusively for the funding of the Phase-IV project in alignment with the provisions outlined in the MoU. Furthermore, Respondent No. 3 was instructed to furnish a bank- issued confirmation attesting to the establishment of the aforementioned non-lien escrow account. In compliance of these directives, Respondent No. 3 proceeded to establish the "Axis escrow account".

7. It is pertinent to note that in the meanwhile, the failure on the part of Respondent No. 3 to adhere to the stipulated timelines for delivering possession of units within the Metrozone project has resulted in the initiation of various legal proceedings against them. Among these legal avenues pursued, the most pertinent to the present petition is Consumer Complaint No. 788 of 2018, lodged by Respondent Nos. 1 and 2 against Respondent No. 3 before the learned NCDRC . This complaint pertains specifically to the delay in handing over possession of a 4 BHK residential unit, identified as Unit No. 304 on the 3rd floor in Tower-A of the Metrozone Phase III This is a digitally signed order.

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project. The property in question was acquired by Respondent Nos. 1 and 2 for a significant sum of Rs. 2,40,71,260/-. The final adjudication on this matter, culminating in a decree passed on the 17th of November 2022 by the learned NCDRC, resulted in the award of delay compensation to Respondent Nos. 1 and 2. This compensation amounted to 6% simple interest per annum on the total amount paid, calculated from the committed date of possession (January 2014) up to the actual date of possession.

8. In the proceedings before the learned NCDRC, Respondent No.3 failed to remit delay compensation despite a final order. Consequently, Respondent Nos. 1 and 2 were prompted to initiate further legal action in the form of Execution Application No. 243 of 2023 before the learned NCDRC on the 15.03.2023. The learned NCDRC, vide its order dated 28.03.2023, issued notices to Respondent Nos. 3 to 8, directing them to file their reply.

9. Subsequent thereto, on 25.07.2023, Respondent Nos. 1 and 2 were directed to furnish a detailed list encompassing the particulars of any movable or immovable properties owned by Respondent No. 3. On 04.12.2023, Respondent Nos. 1 and 2 duly submitted details pertaining to three bank accounts purportedly held by Respondent No. 3. Relying on this submission, the learned NCDRC proceeded to issue warrants of attachment of the mentioned bank accounts.

10. On 10.01.2024, during the subsequent hearing before the learned NCDRC, neither Respondent Nos. 1 and 2 nor Respondent No. 3 appeared. Additionally, the learned NCDRC noted the non-receipt of the report from the State Bank of India regarding the attachment of the bank account in question.

11. On 14.02.2024, the State Bank of India submitted a report indicating This is a digitally signed order.

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12. Upon becoming aware of the order dated 14.02.2024, the petitioner in March 2024 filed Interim Application No. 4658 of 2024 in the Execution Petition under Sections 60 and 61 of the Consumer Protection Act, 2019 taking various objections to passing of the order dated 14.02.2024 and sought the recall of the said impugned order and sought to implead the petitioner as a party respondent in the Execution Application.

13. Subsequently, on 20.03.2024, the counsel of the petitioner appeared before the learned NCDRC, apprising the tribunal of the factual intricacies surrounding the case and the contents of the Interim Application. Despite the pendency of the interim application filed by the petitioner, the learned NCDRC on 24.04.2024 passed an order recording that Axis Bank had submitted a report of debit freeze and the statement of the Axis account. It further reported that there were sufficient funds to

satisfy the decretal amount. The learned NCDRC directed respondent nos. 1 and 2 to submit their final calculation of the decretal amount within a period of one week, whereas, respondent nos. 3 to 8 were given one week's time thereafter to submit their response to the calculation. Thereafter directions were issued to the Axis Bank to remit the funds from the Axis account in satisfaction of the decretal amount.

14. In light of the foregoing, the petitioner has invoked the supervisory jurisdiction of this Court, praying for the quashing of the impugned order or the stay of its implementation.

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Submissions of the petitioner

15. Mr. Arvind Nayar, learned senior counsel appearing on behalf of the petitioner submitted that the learned NCDRC has exceeded its jurisdiction in passing the impugned orders. The Consumer Protection Act, 2019, does not grant the learned NCDRC the power to freeze bank accounts, specifically an escrow account, which serves a regulatory purpose.

16. The learned senior counsel submits that the "non-lien escrow account" was designated exclusively for completion of Phase IV Project which was created under the order dated 28.02.2022 passed by TNRERA by which the monies collected from the petitioner association was to be deposited in the said bank account and utilized exclusively towards construction and completion of Phase IV Project.

17. It was submitted vide order dated 28.02.2022, the TNRERA emphasised significance of its direction to open a "non-lien escrow account"

by referring to a judgment passed by Hon'ble Supreme Court in the case of Union Bank of India vs. Rajasthan RERA & Ors. [SLP No. 1861- 1871/2022 dated 14.02.2022]. However, learned NCDRC failed to consider the said crucial averments which have been made in the interim application moved by the petitioner and the attachment of the "non-lien escrow account"

was done without granting the petitioner an opportunity to be heard which constitutes a grave departure from principles of natural justice.

18. Further, the account is in the name of the Respondent No.3, however, the amount therein belongs to the members of the petitioner association who invested in the Phase IV project. Therefore the Respondent No.1 & 2 cannot attach it in their Execution Proceedings.

19. It is submitted that Respondent No.3, who is the judgment debtor, is This is a digitally signed order.

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20. It is further submitted that Respondent No.3 is undergoing Corporate Insolvency Resolution Process (CIRP) proceedings vide the order dated 01.05.2023 passed by the NCLT Chennai and vide the order dated 10.05.2023, the NCLAT stayed further proceedings against the Respondent No.3. On. 05.06.2023 it was further directed that the affairs of the Respondent No.3 were a „going concern ; therefore the company is still under moratorium. Reliance is placed on the judgement of the Hon ble Apex Court in "Shree Chamundi Moped Ltd. Vs Church of South India Trust Assn."(1992) 3 SCC 1. It was submitted that the impugned order has been passed after moratorium which is not sustainable.

21. Reliance is also placed on an order passed by Madras High Court in a matter pertaining to one Mr. G.N. Pandian in arbitral proceedings. Submissions of respondents

22. Vehemently opposing the submission made by the petitioner, Mr. Prateek K Chadha, learned counsel for the Respondents No. 1 & 2 submits that the present petition preferred by the petitioner is grossly premature as an Interim Application seeking the identical remedy is currently pending before the learned NCDRC, and therefore, entertaining the present petition would be unfair and improper. Reliance is placed upon "Ethiopian Airlines vs. Ganesh Narain Saboo" [(2011) 8 SCC 539] and "Ashok Kumar Tyagi vs. UCO Bank & Anr." [Co. Appl. (AT) (insolvency) No. 1323/2022]. The Learned counsel states that on 24.04.2024, the learned NCDRC had sought This is a digitally signed order.

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23. The learned counsel for the respondent nos. 1 & 2 submits that in terms of the provision of Order XXI Rule 58(4) of the CPC, if it is deemed that the learned NCDRC has adjudicated upon the petitioner's claim that the Axis escrow account is not liable to be attached, then as per the provisions of the aforementioned Rule, such a finding would amount to a decree under the Consumer Protection Act, 2019. In view of the provisions of the Consumer Protection Act read with Order XXI Rule 58(4) of the CPC, the petitioner's remedy lies in appeal to the Hon ble Supreme

Court. Reliance to this effect is placed upon the judgement of the Karnataka High Court in "M/s Havaladar Trading & Finance Pvt. Ltd. Vs Sri U Kamalaksha Prabhu" in W.P No.142/2017 and the judgement of "Gurram Seetharam Reddy vs Gunti Yashoda"[2004 SCC OnLine AP 694] as well the judgement of "Jagdev Singh vs Rajiv Kumar"[2012 SCC OnLine P&H 801]

24. The learned counsel submits that the petitioner is conducting proxy litigation on behalf of the judgement debtor/ respondent no.3, who has This is a digitally signed order.

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25. The learned counsel submits that the petitioner has failed to show any provisions of law as to why a forum or court is prohibited from attaching escrow account as under Section 83 of the Central Goods and Services Tax Act, 2017, the authorities are empowered to attach escrow account. Further as per Section 60 of the CPC, the executing court has an exclusive jurisdiction with regard to matters relating to discharge or satisfaction of a Decree. Reliance is placed on "Abhi Engineering Corporation Pvt. Ltd. & Anr vs Union of India"W.P.(L) No.5842/2020 and "Union Carbide Corporation vs Union of India"[1995 Supp (4) SCC 59]. Thus,there is no prohibition on the learned NCDRC to attach an escrow account. Reliance is placed upon "Desh Bandhu Gupta vs N.L Anand" [(1994 1 SCC 131)].

26. Concluding his submissions, the learned counsel stated that the petitioner has no locus standi for moving an application for setting aside the order dated 14.02.2024 as the execution proceedings are between the judgement debtor, decree holder and the executing court and no other party is required for the adjudication of proceedings. The account is in the name of the judgement debtor and as such, the petitioner has no case against the respondents and the remedy would lie against the judgement debtors.

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27. Regarding the maintainability of the present petition, the learned senior counsel for the petitioner submits in rebuttal that there is no statutory remedy to challenge an order under an

execution proceeding, the only remaining recourse being Article 227 of the Constitution of India. The appeal from the order of learned NCDRC only lies against the orders passed under Section 58(a)(i) and Section 58(a)(ii) of Consumer Protection Act, 2019. The learned senior counsel seeks to place reliance on the judgements of the Hon ble Supreme Court in "Ibrat Faizan vs Omaxe Buildhome Private Limited"(2022 INSC 573), "Universal Sompo General Insurance Ltd. vs. Suresh Chand Jain & Anr." [S.L.P (C) No. 5268/2023] and "Ambience Infrastructure Pvt. Ltd. Vs Ambience Island Apartment Owners & Ors" (2021) 2 SCC 163. The learned senior counsel submitted that without prejudice to his submissions, the remedy under Article 227 of the Constitution of India to impugn the order passed by learned NCDRC is not barred even if a provision of appeal is provided under Consumer Protection Act. Reliance was placed in the case of "Lucina Land Development Ltd. vs Union Of India & Ors." [2022 OnLine Del 1274], which is a judgment passed by the learned Coordinate Bench of this Court and emphasis was laid on paragraph 28 of the judgment. The relevant extract reads as follows:-

28. For all these reasons, I am of the opinion that the right of the petitioners, to approach this Court under Article 227 of the Constitution of This is a digitally signed order.

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28. At this stage, the learned senior appearing on behalf of the petitioner submits that the petitioner has no objection if the decretal amount which is about Rs.78,00,000/- be secured from the attached escrow account in favour of the respondent no.1 and 2, till the application under Section 60 and 61 of the Consumer Protection Act, 2019 is decided, however, the same may not be remitted in favour of the respondent nos. 1 and 2 till then. Analysis and Conclusion

29. At this juncture, a very short dispute has arisen in the present application as the petitioner has objected to attachment of the escrow account on various grounds which have already been raised before the learned NCDRC and the application under Section 60 and 61 of the Consumer Protection Act is pending disposal. It is submitted on behalf of the petitioner that the escrow bank account which is managed by the petitioner has been attached without granting the petitioner an opportunity to be heard. The construction of the Phase IV project has stalled, causing the allottees to suffer. It is submitted that pending such objections of the petitioner, the Axis bank account be de-attached.

30. It is settled law that no hurdle can be put against the exercise of the constitutional powers of the High Court and the supervisory jurisdiction of the High Court to keep the subordinate courts within the bounds of law. Though the learned counsel for respondent nos. 1 and 2 have insisted that an appeal lies to Hon ble Supreme Court against the order of attachment of the escrow account, calling it to be a final order. However, it is observed that the said contention is misconceived for the reason that the petitioner is This is a digitally signed order.

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31. The question regarding the maintainability of a petition under Article 227 of the Constitution of India arose before the Hon ble Supreme Court of India in the case of "Universal Sompo General Insurance Ltd. vs. Suresh Chand Jain & Anr." (supra). The relevant portion, encompassing the findings of the Hon ble Apex Court is as under;

"38. In the aforesaid view of the matter, we have reached to the conclusion that we should not adjudicate this petition on merits. We must ask the petitioner herein to first go before the jurisdictional High Court either by way of a writ application under Article 226 of the Constitution or by invoking the supervisory jurisdiction of the jurisdictional High Court under Article 227 of the Constitution. Of course, after the High Court adjudicates and passes a final order, it is always open for either of the parties to thereafter come before this Court by filing special leave petition, seeking leave to appeal under Article 136 of the Constitution."

32. In view of the above, it cannot be said that there is an alternate efficacious remedy available in the present case against the order of attachment and remittance till disposal of its objections.

33. The Interim Application filed by the petitioner objecting to the attachment of the Axis escrow account is pending adjudication before the learned NCDRC and it yet to be decided. At this stage, only a prima facie view is to be taken in order to balance the equities, keeping in view that the interest of the decree holder is not delayed any further but at the same time, there is no impinging of the rights of the third parties/allottees of Phase IV, Metrozone Project which is being maintained under the aegis of TNRERA.

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34. Having considered the above, it is observed that balance of convenience lies in protecting the interest of the third party/allottees of Phase IV of the Metrozone Project, keeping in view the fact that statement of account furnished by Axis Bank clearly shows that the account is a 70% RERA account under the Scheme of Current Account for RERA.



35. In view of the present facts and circumstances of the case, the orders dated 14.02.2024 and 24.04.2024 are modified to the extent that the "non- lien escrow account" maintained with Axis Bank, Bangalore shall remain attached only to the extent of Rs. 78,00,000/- (Seventy Eight Lakhs only) and the attached amount shall not be remitted to respondent nos. 1 and 2 till the disposal of I.A. No. 4658/2024. However, the parties are at liberty to approach the learned NCDRC for early disposal of I.A. No. 4658/2024.

36. It is made clear that all the issues and submissions made by both the parties are kept open.

37. The application, consequently, stands disposed of. CM(M) 2567/2024

38. Reply be filed within six weeks with advance copy to the other side. Rejoinder, if any, be filed within two weeks thereafter with advance copy to the other side.

39. List for hearing on 07.08.2024.

SHALINDER KAUR, J.

MAY 22, 2024 SU/FK This is a digitally signed order.

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