

Date of Decision : 02<sup>nd</sup> May 2019

**Appeal No.06 of 2018**

Sameer Mahawar son of Shri Sushil Kumar Mahawar, resident of Summer Palms Apartment, C-2, 704, Sector-86, Faridabad.  
IInd Address: Chandigarh Corpo Lex, House No.81, Sector-4, MDC, Panchkula-134114.

.....Appellant

Vs.

MG Housing Pvt Ltd. Through Its Managing Director, G-127, 12<sup>th</sup> Floor, Himalaya House, 23 Kasturba Gandhi Marg, New Delhi, 110001.  
.....Respondent

**Appeal No.11 of 2018**

Manish Kumar son of SSP Singh, resident of F-11, Flat no.303, 3<sup>rd</sup> floor, Vishwakarma Colony, New Delhi 110044.  
IInd Address: Chandigarh Corpo Lex, House No.81, Sector-4, MDC, Panchkula-134114.

.....Appellant

Vs.

MG Housing Pvt Ltd. Through Its Managing Director, G-127, 12<sup>th</sup> Floor, Himalaya House, 23 Kasturba Gandhi Marg, New Delhi, 110001.  
.....Respondent

**Appeal No.12 of 2018**

Neeraj Jain son of Sh. Digamber Prasad Jain, resident of House No. 110-B, street No.7, Gulab Vatika, Loni Road, Ghaziabad, Uttar Pradesh.  
IInd Address: Chandigarh Corpo Lex, House No.81, Sector-4, MDC, Panchkula-134114.

.....Appellant

Vs.

MG Housing Pvt Ltd. Through Its Managing Director, G-127, 12<sup>th</sup> Floor,  
Himalaya House, 23 Kasturba Gandhi Marg, New Delhi, 110001.  
.....Respondent

**Appeal No.13 of 2018**

Sharat Yadav son of Shri VPN Yadav, resident of House No.550, Sector-28,  
Faridabad, Haryana-121008.  
IInd Address: Chandigarh Corpo Lex, House No.81, Sector-4, MDC,  
Panchkula-134114.  
.....Appellant

Vs.

MG Housing Pvt Ltd. Through Its Managing Director, G-127, 12<sup>th</sup> Floor,  
Himalaya House, 23 Kasturba Gandhi Marg, New Delhi, 110001.  
.....Respondent

**Appeal No.14 of 2018**

Anita Mahawar Gupta wife of Yamash Prakash, resident of House no.895-D,  
Ward no.8, Mehrauli, New Delhi 110044.  
IInd Address: Chandigarh Corpo Lex, House No.81, Sector-4, MDC,  
Panchkula-134114.  
.....Appellant

Vs.

MG Housing Pvt Ltd. Through Its Managing Director, G-127, 12<sup>th</sup> Floor,  
Himalaya House, 23 Kasturba Gandhi Marg, New Delhi, 110001.

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.....Respondent

**Appeal No.15 of 2018**

Nitin Kumar Chauhan son of Sh. Sushil Kumar Chauhan, resident of E-601, Supertech Livingstone Crossing Republic, Ghaziabad, UP-201016.  
IInd Address: Chandigarh Corpo Lex, House No.81, Sector-4, MDC, Panchkula-134114.

.....Appellant

Vs.

MG Housing Pvt Ltd. Through Its Managing Director, G-127, 12<sup>th</sup> Floor, Himalaya House, 23 Kasturba Gandhi Marg, New Delhi, 110001.  
.....Respondent

**Appeal No.16 of 2018**

Mohd Shaquib son of Sh. Abdul Rashid Ansari, resident of F-56/23, Sir Syed Road, Batla House, PO Jamia Nagar, New Delhi-110025.  
IInd Address: Chandigarh Corpo Lex, House No.81, Sector-4, MDC, Panchkula-134114.

.....Appellant

Vs.

MG Housing Pvt Ltd. Through Its Managing Director, G-127, 12<sup>th</sup> Floor, Himalaya House, 23 Kasturba Gandhi Marg, New Delhi, 110001.  
.....Respondent

**Appeal No.17 of 2018**

Rudra Pratap Ojha son of Sh. Shankar Dayal Ojha, resident of House No.B-2-210, Himsagar Apartments, P-4, Greater Noida, Uttar Pradesh.

IInd Address: Chandigarh Corpo Lex, House No.81, Sector-4, MDC,  
Panchkula-134114.

.....Appellant

Vs.

MG Housing Pvt Ltd. Through Its Managing Director, G-127, 12<sup>th</sup> Floor,  
Himalaya House, 23 Kasturba Gandhi Marg, New Delhi, 110001.

.....Respondent

### **Appeal No.18 of 2018**

Sundeeep Chopra son of Prem Lal Chopra, resident of Flat No.41, Building  
No.13, Road 4025, Block 340, Juffair, Manama, Kingdom of Bahrain through  
Special Power of Attorney Sameer Mahawar son of Sushil Kumar Mahawar,  
Summer Palms Apartment, C-2, 704, Sector-86, Faridabad 121002.

IInd Address: Chandigarh Corpo Lex, House No.81, Sector-4, MDC,  
Panchkula-134114.

.....Appellant

Vs.

MG Housing Pvt Ltd. Through Its Managing Director, G-127, 12<sup>th</sup> Floor,  
Himalaya House, 23 Kasturba Gandhi Marg, New Delhi, 110001.

.....Respondent

### **Appeal No.53 of 2018**

Roshni and Sangeeta

Both residents of 51, Aggarsain Colony, Assandh Road, Panipat-132103.

.....Appellants

Vs.

Jindal Realty Pvt. Ltd., resident of DSM 609-610, 6<sup>th</sup> Floor, DLF Tower, Shivaji Marg, Moti Nagar, new Delhi-110015, at present Jindal Global City, Sector-35, Sonapat Narela Road, Sonapat-131001.

.....Respondent

### **Appeal No.68 of 2018**

Smt. Mira Mahbubani wife of Shri Hari ram Mahabubani, resident of IC4/105, Essel Tower, MG Road Gurugram (Haryana)-122002.

.....Appellant

Vs.

M/s IREO Grace Realtech (Pvt.) Ltd. Through its Director/Authorized Signatory, Corporate Office : IREO Campus Sector-59, Gurugram & 5<sup>th</sup> Floor, Orchid Centre, Golf Course Road, Sector-53, Gurugram.

.....Respondent

### **Appeal No.80 of 2018**

Rashmi Malviya, resident of Flat no.223, Tower B, DLF Primus, Sector-82-A, Gurgaon-122004, IInd address : A-414, LGF, Defence Colony.

.....Appellant

Vs.

M/s Varali Properties Ltd., through its Managing Director and other Directors, registered office at M-62/63, First Floor, Connaught Place, New Delhi-110001.

.....Respondent

### **Appeal No. 9 of 2019**

1. Mr. Ramesh Kumar son of Dhajja Ram Gupta
2. Mrs. Seema wife of Shri Ramesh Kumar

Both residents of E2/1505, G21 Avenue, Vatika India Next, Sector-83, Gurgaon, Haryana-122004.

.....Appellants

Vs.

M/s Parsvnath Developers Pvt. Ltd., Parsvnath Tower, near Shahdara Metro Station, Shahdara, new Delhi-110032.

.....Respondent

**Appeal No.37 of 2019**

1. Smt. Pushpa Gupta wife of Shri Laxmi Narain Gupta  
2. Mr. Gaurav Gupta son of Shri Laxmi Narain Gupta  
Both residents of house no.83, Tagore Park, Model Town I, New Delhi-110009.

.....Appellants

Vs.

M/S VSR Infratech Pvt. Ltd., registered office at A-22, Hill View Apartment, Vasant Vihar, New Delhi-110057 and Corporate Office : Plot No.14, Ground Floor, Institutional Area, Sector-44, Gurugram-122003.

.....Respondent

**Appeal No.72 of 2019**

1. Om Prakash Kapoor  
2. Manvinde Kaur Sahni  
Both residents of Flat No.R-1107, Devender Vihar, near Jalvayu Towers, Sector-56, Gurugram, Haryana-122011, IInd Address: C-4, Sardar Nagar, Near C.C. Colony, New Delhi-110009.

.....Appellants

Vs.

1. Parsvnath Hessa Developers Private Limited (PHDPL)
2. Parsvnath Developers Limited (PDL)  
.....Respondent

**Appeal No. 104 of 2019**

1. Raj Kumar Chawla,
2. Indu Chawla,  
Both residents of resident of house no.K-3/15, Ground Floor, DLF,  
Phase-II, Gurugram, Haryana.  
.....Appellants

Vs.

M/s Parsvnath Developers Pvt. Ltd., Parsvnath Tower, near Shahdara Metro Station, Shahdara, New Delhi-110032.  
.....Respondent

**Appeal No. 133 of 2019**

1. Ram Prakash Sharma
2. Ambika Sharma  
Both residents of A-163, Sarita Vihar, New Delhi-110076.  
.....Appellants

Vs.

Ramprastha Promoters & Developers Pvt. Ltd., Plot no.114, Sector-44, Gurugram-122002, Haryana.  
.....Respondent

**Appeal No. 159 of 2019**

1. Ram Prakash Sharma
  2. Ambika Sharma
- Both residents of A-163, Sarita Vihar, New Delhi-110076.

....Appellants

Vs.

BPTP Ltd. M-11, Middle Circle, Connaught circle, New Delhi-110001.  
.....Respondent

### **Appeal No. 174 of 2019**

1. Harish Gupta, resident of Shop No.3, Asiad Village, Khel Gaon Marg, New Delhi-110048.
2. Sonia Gupta, resident of House No.L-13/6, First Floor, DLF Phase-2, Gurugram-122002.

....Appellants

Vs.

Landmark Apartments Private Limited, Landmark House, Plot No.65, Sector-44, Gurugram-122002.

.....Respondent

#### **CORAM:**

**Justice Darshan Singh (Rtd.)**                      **Chairman**

**Shri Inderjeet Mehta**                              **Member (Judicial).**

**Shri Anil Kumar Gupta**                        **Member (Technical)**

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#### **Argued by:-**

Shri Nitin Kant Setia, Advocate, Ld. counsel for appellant in appeals No. 6/2018, 11/2018, 12/2018, 13/2018, 14/2018, 15/2018,16/2018, 17/2018 and 18/2018.

Shri Sandeep Singh Ghanghas, Advocate, Ld. Counsel for appellant in appeal no.53/2018.





Shri Vivek Sethi, Advocate, Ld. counsel for appellant in appeal No.37/2019.

Shri Jagmohan Bansal, Advocate, Ld. counsel for appellant in appeal No.72/2019.

Shri Ajay Ghanghas, Advocate, Ld. Counsel for appellant in appeal No.104/2019.

Shri Malkiat Singh Hundal, Advocate, Ld. Counsel for appellant in appeal no.80/2018.

Shri Satish Mishra, Advocate, Ld. Counsel for appellant in appeal No.09/2019.

Shri Shivam Grover, Advocate, Ld. Counsel for the appellant in appeal No.174/2019.

Shri Vikrant Rana, Advocate, Ld. Counsel for the appellant in appeal No.68/2018.

Shri Ram Prakash Sharma, Appellant in person, in appeals No.133/2019 and 159/2019.

Shri Shekhar Verma, Advocate, Ld. Counsel for respondent in appeal No.09/2019, 72/2019 and 104/2019.

Shri Rajeev Anand, Advocate, Ld. Counsel for respondent in appeal No.80/2018.

Shri G.S. Chauhan, Advocate, Ld. Counsel for the respondent in appeal No.174/2019.

Shri Vinod S. Bhardwaj, Advocate, Ld. Counsel for the respondent in appeal No.68/2018.

Shri Amarjeet Kumar, Advocate, Ld. Counsel for the respondent in appeal No.37/2019.



Shri Gunjan Rishi, Advocate, Ld. Counsel for the respondent in appeals No.6/2018, 11/2018, 12/2018, 13/2018, 14/2018, 15/2018, 16/2018, 17/2018, 18/2018.

Shri Sanjeev Sharma, Advocate, ld. Counsel for the respondent is appeal No.53/2018.

Shri Dheeraj Kapoor, Advocate, Ld. Counsel for the respondent in appeal No.133/2019.

Shri Hemant Saini, advocate, Ld. Counsel for the respondent in appeal No.159/2019.

**ORDER :**

By way of this order we shall decide a bunch of appeals no. 06/2018, 11/2018, 12/2018, 13/2018, 14/2018, 15/2018, 16/2018, 17/2018, 18/2018, 53/2018, 68/2018, 80/2018, 9/2019, 37/2019, 72/2019, 104/2019, 133/2019, 159/2019 and 174/2019 as these raised a common question of law, namely the forum before, which a person can claim the relief of refund/return of investment and compensation due to violation of the provision of Sections 12, 14, 18 & 19 of the Real Estate (Regulation and Development) Act 2016 (hereinafter referred as the Act) or the terms and conditions of the Builder Buyers Agreement for sale. The question posed before this Tribunal is as to whether for seeking the relief of refund, return of investment and interest including compensation one should approach the Haryana Real Estate Regulatory Authority (hereinafter referred as the Authority) or to the adjudicating officer ?

2. In all the complaints filed by the appellants/allottees before the Ld. Authority, they have sought the refund of their money, compensation and interest or refund/return of money with interest.

3. We have heard Ld. counsel for the parties. The written submissions have also been filed in appeal no. 72/2019. We have also meticulously examined the record of the case.

4. Initiating the arguments Shri Nitin Kant Setia, Advocate, Ld. counsel for appellants contended that the appellants are seeking the relief of refund of their investment and interest in the present appeals. He contended that there is absolutely no prohibition in the Act to the Ld. Authority to entertain such complaints and to award the relief of refund and interest, which has been wrongly denied in these cases by the Ld. Authority. He contended that as per Section 71 of the act the adjudicating officer is only invested with the powers to entertain complaints for grant of compensation. There is no reference of forum who can grant refund in this provision of law.

5. He further contended that generally the complaints are filed by the allottees raising various issues, grievances and violations of the provisions of Act, rules, regulation and the terms and conditions of the agreement for sale. He contended that the adjudicating officer has no jurisdiction to deal with

any other matter except the compensation. In a complaint the allottee may have raised the other issues like inaccuracy in the balance amount, wrong imposition of the GST, EDC and IDC charges etc. The complaint can also raise the issue regarding non-registration of project and for imposition of penalties for violation of the provision of the Act, rules and regulations. He contended that the adjudicating officer had no jurisdiction to deal with all these issues and the only forum available to the complainant allottees is the Ld. Authority. He further contended that Ld. Authority has jurisdiction to entertain and adjudicate upon all the matters, which are not specifically mentioned in rule 29 of the Haryana Real Estate (Regulation & Development) Rules 2017 (hereinafter referred as the Rules). He contended that relief of refund nowhere figures in rule 29 of the Rules. Thus, he contended that Ld. Regulatory Authority is fully competent to award the refund of investment/return of money alongwith interest and these reliefs have been wrongly denied in these cases by the Ld. Authority.

6. Shri Vivek Sethi, Advocate, Ld. counsel for the appellant in appeal no.37/2019 has also endorsed the contentions raised by Shri Nitin Setia. In addition to that he contended that the relief of refund is provided in Section 12, 18 and 19(4) of the Act. There is no specific prohibition for Ld. Authority

to entertain the complaints seeking refund of the investment under these provisions.

7. Shri Jagmohan Bansal, Ld. counsel for appellant in appeal no.72/2019 by referring the provisions of sections 12, 14, 18, 19, 31, 71, 72 and rules 28 & 29 contended that from the conjoint reading of the aforesaid provisions of law it is quite evident that only the question of compensation or/and interest can be adjudicated upon by the adjudicating officer. The adjudicating officer has the powers to determine the question of compensation contemplated under Sections 12, 14, 18 and 19 of the Act, keeping in view the factors provided in Section 72 of the Act. He contended that it is quite evident from the aforesaid provisions that adjudicating officer has no jurisdiction to order the refund of the principal amount. If it is concluded that adjudicating officer has power to refund the principal amount it would amount to re-write the enabling and procedural provisions, which is beyond the sphere of Tribunal/Court. The Tribunals/Courts can only interpret the law. He further contended that the rules are made to achieve the objects of the Act. These are made to add and assist the principal act. The rules cannot create or takeover the jurisdiction of any authority, which is specifically dealt with in the Act itself. He contended that rules 28 & 29 make it clear that the question of interest and compensation would be within

the domain of the adjudicating officer. These rules nowhere provided that adjudicating officer can assume the jurisdiction of the Ld. Authority. It is within the exclusive jurisdiction of the authority to deal with the question of refund of the principal amount alongwith the interest.

8. He further contended that the Act has created two independent authorities i.e. adjudicating officer and Authority. It is a matter of convenience that the complainant may approach the authority for refund and adjudicating officer for compensation. There may be different findings of these forums but it is up to the complainant to challenge the same before the Appellate Authority. He further contended that in tax matters for the same cause of action and on basis of same bundle of facts interest and penalty is decided by adjudicating authority whereas the prosecution falls within the jurisdiction of the criminal Courts. Same principle applies in service matter. He further contended that in Section 12, 18 and 19 it has been provided that the allottees shall be entitled for the refund of the principal amount alongwith interest. In all these sections it has been categorically provided that interest would be at such rate as may be prescribed. He further vehemently contended that Section 71(1) talks only of the compensation though in sub-section (3) of 71 interest apart from compensation have been mentioned. The conjoint reading of Sections 31 and 71 makes it clear that

adjudicating officer can only adjudicate upon the question of compensation and/or interest and not the refund of principal amount. He contended that the interest may be granted by the adjudicating officer in case the compensation awarded by it is not paid within the prescribed time. He has also referred to the provisions of the Prevention of Corruption Act 1988 to point out that the Special Judge is empowered to try the offences under the Prevention of Corruption Act, Prevention of Money Laundering Act and the Indian Penal Code. He concluded by contending that adjudicating officer is not empowered to adjudicate the question of the refund of the principal amount, which is entirely within the domain of the authority and adjudicating officer has jurisdiction to decide only the question of compensation or interest.

9. Shri Ajay Ghanghas, Advocate, Ld. counsel for the appellant in appeal no.104/2019 and Shri Shivam Grover, Ld. counsel for the appellant in appeal no.174/2019 have also endorsed the contentions raised by their fellow counsel. Shri Shivam Grover has added that the appellants in appeal no.174/2019 have not claimed any compensation in their complaint. They have just claimed the refund alongwith interest, which is entirely within the jurisdiction of Ld. Authority as Ld. Authority has not been specifically

debarred under any provision of the Act or the Rules to deal with the cases for the refund of the principal amount and to award interest on that money.

10. Shri Sandeep Singh Ghanghas, Advocate, Ld. counsel for appellant in appeal no.53/2018 and Shri Vikrant Rana, Advocate, Ld. counsel for appellant in appeal no.68/2018 have also endorsed the aforesaid contentions raised by Ld. counsel for other appellants. Shri Ramparkash Sharma, as appellant in appeals no.133 and 159 has also supported the contentions raised by Ld. counsel for his fellow appellants. He has further pleaded that in his case the work is lying stand still and the license of the promoter was not renewed. He had even claimed the compensation but the Ld. Authority had awarded the relief of interest on delayed payment whereas he was fully entitled for relief of compensation alongwith interest in addition to refund.

11. On the other hand Ld. counsel for respondents in one voice controverted the contentions raised by Ld. counsel for appellants. They contended that the role of the Authority is to regulate the development of the project. The Authority can take cognizance of the matters with respect to the violations of the provisions of the Act, rules and regulations formulated by the Authorities. The Authority can on the basis of complaint, suo-moto or



based on the findings of the adjudicating officer can intervene to check the violations of Sections 3, 4, 9, 10, 11, 13, 14(1), 14(2), 15, 16, 17, 19(1), 19(2), 19(3) and 19(5) as well as the violations of the rules and regulations. They contended that the Authority has power to impose penalty or interest. The order passed by the Authority will affect the entire project. Whereas the adjudicating officer would adjudicate upon the inter-se disputes between allottees and the promoters. Those will be the individual disputes. The relief of seeking refund, interest and compensation are the reliefs available to the individual allottees, which will fall within the purview of the adjudicating officer.

12. They further contended that the position becomes evident from the provision of Section 71 and rule 29. As per Section 71 of the Act the adjudicating officer after inquiry will determine the grant of compensation or interest. They further pointed out that as per rule 29 of the rules any aggrieved person may file a complaint with the adjudicating officer for interest and compensation as provided under Section 12, 14, 18 and 19 of the Act in “Form CAO” in triplicate. Whereas as per rule 28 the complaint can be filed before the Authority by any aggrieved person for any violations of the provisions of the Act or Rules and regulations made thereunder save as those provided to be adjudicated upon by the adjudicating officer. Thus they

contended that the Authority can only take cognizance of those matters, which are beyond the competency of the adjudicating officer. They contended that the grant of refund/return of money, compensation and interest clearly flows from the violations of Sections 12, 14, 18 & 19 of the Act for which only the adjudicating officer is competent to adjudicate upon.

13. They further contended that there cannot be two forums to adjudicate upon the violation of the same provision. The same cause of action cannot be splitted in two complaints one before the Authority and one before the adjudicating officer. The comprehensive complaint seeking the relief of compensation, refund and interest is required to be filed before the adjudicating officer. Thus they contended that the Ld. Authority had absolutely no jurisdiction to entertain the complaint and grant the relief of return of investment/refund with interest including/and compensation.

14. Shri Shekhar Verma, Ld. counsel has also given some valuable suggestions in his written synopsis.

15. We have duly considered the contentions raised by Ld. counsel for the parties. At the time of arguments, in all the appeals it was the unequivocal plea that the appellants are entitled for refund/return of the investment alongwith interest due to various violations of the Act, rules and

regulations, terms and conditions of the agreement to sell. They have pleaded that their claim for refund has been wrongly rejected by the Ld. Authority.

16. So, the question posed in these appeals is as to which forum, whether the Ld. Authority or the Ld. Adjudicating Officer will be competent to grant the relief of refund alongwith interest, in the complaints filed by appellants.

17. In the bunch of nine appeals no. 06/2018, 11/2018, 12/2018, 13/2018, 14/2018, 15/2018, 16/2018, 17/2018, 18/2018, in the reply to the complaints, the respondent promoter has not specifically raised the issue regarding jurisdiction of the Ld. Authority to entertain the complaints for the claim of refund alongwith interest but the question of jurisdiction is a legal issue. In the instant case there is no factual dispute between the parties so, the question of jurisdiction in the present appeals becomes purely a question of law. It is settled principle of law that the question of law can be raised even at the appellate stage without any such plea in the pleadings. Reference can be made to the cases titled as **Panchugopal Barua & Ors. vs. Umesh Chandra Goswami & Ors. AIR 1997 SC 1041** and **Kshitish Chandra Purakait vs. Santosh Kumar Purkait & Ors AIR 1997 SC 2517**. In view of

the aforesaid ratio of law the question of jurisdiction can be raised in the present appeals even in the absence of pleadings.

18. In the Act and the Rules there is no specific provision as to who will deal with the cases projecting the relief of refund/return of investment. It is settled principle of law that where the provisions of the Act are ambiguous the help can be taken from the object and reasons of the Act. The Act has been enacted to establish authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of the consumers in the real estate sector. The Act also establishes an adjudicating mechanism for the speedy dispute redressal. The Appellate Tribunal has been established to hear appeals from the decisions, directions or orders of the Authority and the adjudicating officer. The Authority and adjudicating officer have been established to redress the grievances of the allottees with respect to the violations and contraventions of the Act rules and regulations etc. by the promoters, real estate agents and allottees as well.

19. The mechanism for filing the complaints has been provided under Section 31 of the Act, which reads as under :-



**31. Filing of complaints with the authority or the adjudicating officer.-**

- (1) *Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the Rules and Regulations made thereunder against any promoter allottee or real estate agent as the case may be. Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.*
- (2) *The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations.*

20. As per the aforesaid provision any aggrieved person may file a complaint with the Authority or with the adjudicating officer as the case may be for any violation or contraventions of the provisions of the Act or the rules and regulations made thereunder against the promoter, allottee or the real estate agent as the case may be. As per the aforesaid provision an aggrieved person can file the complaint either before the Authority or before the adjudicating officer for any violation or contraventions of the provisions of the Act, rules and regulations as per their competency and jurisdiction.

21. There is no scope of dispute with respect to the relief of compensation. Section 71 and Rule 29 of the Act reads as under :-



**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 section 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, 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.*

**29. Filing of complaint and inquiry by adjudicating officer. sections 12, 14, 18 and 19.-**

(1) *Any aggrieved person may file a complaint with the adjudicating officer for interest and compensation as provided under sections 12, 14, 18 and 19 in Form 'CAO', in triplicate, which shall be accompanied by a fee as mentioned in Schedule III in the form of a demand draft or a bankers cheque drawn on a Scheduled bank in favour of "Haryana Real Estate Regulatory Authority" and payable at the branch of that bank at the station where the seat of the said Authority is situated.*

(2) *The adjudicating officer shall for the purposes of adjudging interest and compensation follow summary procedure for inquiry in the following manner, namely:-*

(a) *upon receipt of the complaint, the adjudicating officer shall issue a notice along with particulars of the alleged contravention and the relevant documents to the respondent;*

*(b) the respondent against whom such notice is issued under clause (a) of sub-rule (2) may file his reply in respect of the complaint within the period as specified in the notice;*

*(c) the notice may specify a date and time for further hearing and the date and time for the hearing shall also be communicated to the complainant;*

*(d) on the date so fixed, the adjudicating officer shall explain to the respondent about the contravention alleged to have been committed in relation to any of the provisions of the Act or the rules and regulations made thereunder and if the respondent,*

*(i) pleads guilty, the adjudicating officer shall record the plea, and by order in writing, order payment of interest as specified in rule 15 and such compensation as he deems fit, as the case may be, in accordance with the provisions 21 of the Act or the rules and regulations, made thereunder;*

*(ii) does not plead guilty and contests the complaint, the adjudicating officer shall demand and explanation from the respondent;*

*(e) in case the adjudicating officer is satisfied on the basis of the submissions made that the complaint does not require any further inquiry, he may dismiss the complaint;*

*(f) in case the adjudicating officer is satisfied on the basis of the submissions made that there is a need for further hearing into the complaint, he may order production of documents or other evidence on a date and time fixed by him;*



*(g) the adjudicating officer shall have the power to carry out an inquiry into the complaint on the basis of documents and submissions;*

*(h) the adjudicating officer shall have the 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 documents which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry, and in taking such evidence.*

*(i) on the date so fixed, the adjudicating officer upon consideration of the evidence produced before him and other records and submissions is satisfied that the respondent is,-*

*(i) liable to pay interest and compensation, as the case may be, the adjudicating officer may, by order in writing, order payment of interest as specified in rule 14 and such compensation as he deems fit.*

*(ii) not liable to any interest or compensation, as the case may be, the adjudicating officer may, by order in writing, dismiss the complaint, with reasons to be recorded in writing;*

*(j) if any person fails, neglects or refuses to appear, or present himself as required before the adjudicating officer, the adjudicating officer shall have the power to proceed with the inquiry in the absence of such person or persons after recording the reasons for doing so.*

*(3) The procedure for day to day functioning of the adjudicating officer, which have not been provided by the Act or the rules made thereunder, shall be as specified by regulations made by the Authority.*

*(4) Where a party to the complaint is represented by an authorised person, a copy of the authorisation to act as such and the written consent thereto by such authorised person, both in original, shall be appended to the complaint or the reply to the notice of the complaint, as the case may be.*

22. As per Section 71 the very purpose of the appointment of the adjudicating officer is to adjudge the compensation for violations of Sections 12, 14, 18 & 19 of the Act. Section 71(3) of the Act provides that the adjudicating officer shall conduct an inquiry to ascertain whether a person against whom the complaint has been filed has violated the provisions of Sections 12, 14, 18 & 19 of the Act for the purpose of adjudging compensation or interest. Rule 29 of the Act also clearly stipulates that any aggrieved person may file a complaint with the adjudicating officer for interest and compensation as provided under Sections 12, 14, 18 & 19 of the Act in form ‘CAO’ in triplicate alongwith requisite fees. Thus from the conjoint reading of section 71 and rule 29 of the Act, the position becomes evident that it is only the adjudicating officer who can deal with the cases/complaints wherein the compensation has been claimed. As per Section 71(1) of the Act the Authority may appoint one or more Judicial Officer, who is or have been a District Judge as adjudicating officer for the purpose of adjudging compensation under Sections 12, 14, 18 & 19 of the Act in consultation with the appropriate Government. Section 71(3)

enumerates the procedure to be adopted by the adjudicating officer while holding an inquiry and to record its conclusion with respect to the violation of the provisions of Sections 12, 14, 18 & 19 of the Act for grant of the appropriate compensation and/or interest. As already mentioned the aforesaid provision of law leaves no ambiguity that only the adjudicating officer can grant compensation alongwith interest.

23. The grey area is with respect to the grant of the relief of refund/return of investment. As already mentioned, in the Act and Rules, it has not been specifically mentioned as to which forum either of the two i.e. Authority or adjudicating officer, will deal with such cases. In order to arrive at conclusion we have to refer certain provisions of the Act and the Rules. The relief of refund has been provided in Sections 12, 18(1) and 19(4) of the Act. The procedures for entertainment and filing the complaints have been laid down in rules 28 & 29. Before proceeding further it will be pertinent to mention here that the Authority is establish under Section 20 of the Act. The Authority so constituted is empowered to perform various functions assigned under the Act, which includes registration of the project, monitoring of the project, imposition of penalty and recommendation for prosecution etc. but there is no reference of the Authority in the relevant provisions of Sections

12, 14, 18 & 19 of the Act, to deal with cases for refund. Rule 28 of the rules reads as under :-

### **28. Filing of complaint with the Authority Section 31.-**

*(1) Any aggrieved person may file a complaint with the Authority for any violation of the provisions of the Act or the rules and regulations made thereunder, save as those provided to be adjudicated by the adjudicating officer, in Form 'CRA', in triplicate, which shall be accompanied by a fees as prescribed in Schedule III in the form of a demand draft or a bankers cheque drawn on a Scheduled bank in favour of "Haryana Real Estate Regulatory 19 Authority".*

*(2) The Authority shall for the purposes of deciding any complaint as specified under sub-rule (1), follow summary procedure for inquiry in the following manner, namely:-*

*(a) upon receipt of the complaint, the Authority shall issue a notice alongwith particulars of the alleged contravention and the relevant documents to the respondent specifying date and time of hearing;*

*(b) the respondent against whom such notice is issued under clause (a) of sub-rule (2), shall file his reply in respect of the complaint within the period as specified in the notice;*

*(c) the notice shall specify a date and time for further hearing and the date and time for the hearing shall also be communicated to the complainant;*



*(d) on the date so fixed, the Authority shall explain to the respondent about the contravention alleged to have been committed in relation to any of the provisions of the Act or the rules and regulations made thereunder and if the respondent.*

*(i) pleads guilty, the Authority shall record the plea, and pass such orders including imposition of penalty as it deems fit in accordance with the provisions of the Act or the rules and regulations, made thereunder;*

*(ii) does not plead guilty and contests the complaint, the Authority shall demand an explanation from the respondent;*

*(e) in case the Authority is satisfied on the basis of the submissions made that the complaint does not require any further inquiry, it may dismiss the complaint with reasons to be recorded in writing;*

*(f) in case the Authority is satisfied on the basis of the submissions made that there is a need for further hearing into the complaint, it may order production of documents or other evidence(s) on a date and time fixed by it;*

*(g) the Authority shall have the power to carry out an inquiry into the complaint on the basis of documents and submissions;*

*(h) the Authority shall have the 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 documents which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry, and in taking such evidence, the Authority*

*shall not be bound to observe the provisions of the Indian Evidence Act, 1872 (11 of 1872);*

*(i) on the date so fixed, the Authority upon consideration of the evidence produced before it and other records and submissions, is satisfied that,*

*(i) the respondent is in contravention of the provisions of the Act or the rules and regulations made thereunder, it shall pass such orders 20 including imposition of penalty as it thinks fit in accordance with the provisions of the Act or the rules and regulations made thereunder;*

*(ii) the respondent is not in contravention of the provisions of the Act or the rules and regulations made thereunder, the Authority may, by order in writing, dismiss the complaint, with reasons to be recorded in writing;*

*(j) if any person fails, neglects or refuses to appear, or present himself as required before the Authority, the Authority shall have the power to proceed with the inquiry in the absence of such person or persons after recording the reasons for doing so.*

*(3) The procedure for day to day functioning of the Authority, which have not been provided by the Act or the rules made thereunder, shall be as specified by regulations made by the Authority.*

*(4) Where a party to the complaint is represented by an authorised person, as provided under section 56, a copy of the authorisation to act as such and the written consent thereto by such authorised person, both in original, shall be appended to the complaint or the reply to the notice of the complaint, as the case may be.*

24. Rule 28 reproduced above provided for filing of the complaint before the Authority by any aggrieved person for any violation of the provisions of the Act or the rules and regulations made thereunder save as those provided to be adjudicated by the adjudicating officer. The aforesaid rule makes the position evident that the Authority can entertain the complaint only for those violations of the provisions of the Act, rules and regulations, which are beyond the competency of the adjudicating officer. The compensation under Sections 12, 14, 18 & 19 of the Act is within the exclusive competence of the adjudicating officer.

25. The conjoint reading of Sections 31, 71 and Rules 28 & 29 shows that the adjudicating officer has the powers to determine violations under Sections 12, 14, 18 & 19 of the Act for the purpose of awarding compensation and/or interest whereas the authority has specific powers to levy penalties and to set aside an order cancelling the allotment. Ld. Authority is no where specifically empowered by any provision of the Act to award any relief enumerated in Sections 12, 14, 18 & 19 of the Act, which are within the purview of the adjudicating officer.

26. It is settled principle of law that the party should not be driven to different forums for the relief/claim arising out of the same cause of action.

The intent of the said principle is that there should be no multiplicity of litigation and rights of the party should be determined in the same *lis* by the one and same forum. Reference can be made to a division bench judgment of our Hon'ble High Court in case M/s Gupta Company & Ors. Vs. Punjab Sind Bank & Anr.2018(1) PLR 30. Thus it is the basic principle of the adjudication that the entire bundle of rights, which constitute the cause of action inviting the multiple reliefs must be placed before one adjudicatory forum.

27. In the present bunch of appeals we are concerned only with the relief of refund/return of investment, which flows from the provisions of Sections 12, 18(1) and 19(4) of the Act.

## **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.*

28. Section 12 reproduced above is divided into two parts. The first part deals with the grant of compensation, which does not create any difficulty as the relief of compensation can only be awarded by the adjudicating officer as per the provisions of Section 71 of the Act read with rule 29 of the rules.

29. In the proviso to Section 12 it has been provided that if a person is affected by the incorrect and false statements contained in the notice, advertisements or the prospectus and such person intends to withdraw from the proposed project he shall be returned his entire investment alongwith interest at such rate as may be prescribed and the compensation in the manner provided under the Act. Thus, the relief regarding the return of entire investment alongwith interest and compensation also arises from the same violation as provided in the first part of Section 12. The relief ensuing from the same violation/bundle of rights/cause of action cannot be bifurcated and placed before the two different adjudicatory forums.

30. An adjudicatory process must ensure that the entire dispute arising out of the bundle of rights and constituting the same cause of action from the same violations or contraventions are placed before the same

forum. If the contentions raised by Ld. Counsel for the appellants are accepted then the complainant would have to approach two different forums i.e. one complaint to determine the violations and contraventions for the return of investment before the authority and the another complaint before the adjudicating officer to determine the question of awarding compensation on the basis of same violations and cause of action. Such a course would not be legal and will create multiplicity of the litigation. The conflicting findings being pronounced by both the forums with respect to the same violations/contraventions also cannot be ruled out. That will create problematic situation which is required to be avoided in any system whether judicial or administrative.

31. Consequently, if the violation and cause of action are the same, mere this fact that multiple reliefs may arise and be awarded in relation to the same cause of action cannot be a valid ground to justify the filing of the complaints before two different forums merely because the different reliefs are sought. The segregation of the violations and causes of action on the basis of relief is not legally permissible.

32. In the proviso to Section 12 of the Act it has been provided that any person affected by incorrect, false statement contained in the notice,

advertisement or prospectus will be entitled to seek the return of his entire investment alongwith interest at such rate as may be prescribed and the compensation in the manner provided under the Act, if he intends to withdraw from the project. Thus in this proviso, relief of compensation has been provided for the same violations as mentioned in the first para of Section 12. Thus, whether the compensation is to be awarded with the return of investment and interest, the cause of action remains the same i.e. the incorrect/false information by the promoter. The matter would therefore, be required to be placed before the same forum i.e. the adjudicating officer as he is the only competent/empowered functionary to award the compensation and other reliefs mentioned in the proviso which cannot be segregated and cannot be considered to be the independent reliefs.

33. To claim the relief can be an option of the aggrieved person but he cannot be allowed to choose or opt a particular forum. He has to approach an appropriate adjudicatory forum for redressal of his grievances as per law. Thus, the return of the investment alongwith interest as provided in proviso to Section 12 will also go with compensation and such complaints have to be placed before the adjudicating officer.

34. Section 18 of the Act reads as under :-



**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. Transfer of title. Return of amount and compensation.*

- (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.*

35. Section 18(1) provides the remedy to the allottee, if the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement of sale and due to the reasons mentioned in the section 18(1)(b), if the allottee wishes to withdraw himself from the project, the promoter will be liable to return the amount received by him on the demand of allottee with interest at such rate as may be prescribed on his behalf including compensation in the manner as provided under the Act. As per Section 18(1) if the allottee wishes to withdraw from the project due to the reasons mentioned in clause (a) & (b) of Section 18(1) he will be entitled for the return of the money with interest at the prescribed rate including compensation. The use of expression “including compensation in the manner as provided under the Act” is very significant to interpret the section. It is the settled principle of the interpretation of statutes that whenever the word “includes” is used in a Section it enlarges the scope

of the provision. It shows the intention of the legislature to make the provision enumerative. When word “includes” is used in the provision, it will retain its ordinary meaning, its scope would be extended to bring within its purview, which in its ordinary meaning may or may not comprise.

36. Section 18(1) necessarily refers to the adjudication by the adjudicating officer exercising the powers under section 71 of the Act and rule 29 of the rules as for the same violations and the cause of action one of the relief provided in this Section is the compensation. So, the entire matter has to be placed before the adjudicating officer. As already discussed when the cause of action and violation being the same and compensation being one of the reliefs, the complaints for the relief for refund and interest will also have to be placed before the adjudicating officer. Consequently the adjudicating officer will alone be competent to entertain the complaints for the cause of action and violation under Section 18(1) of the Act for claiming the relief for the return of money with interest as compensation is also including in the reliefs provided therein and only the adjudicating officer can adjudge the compensation as per the provisions of section 71 of the Act and rule 29 of the Rules.

37. The another provision dealing with the refund of the amount is Section 19(4) of the Act, which reads as under :-

**19. Rights and duties of allottees.-**

(1).....

(2).....

(3).....

(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.*

38. Section 19 enumerates the rights and duties of the allottees. Section 19(4) provides that allottee shall be entitled to claim the refund of the amount alongwith interest at such rate as may be prescribed and compensation in the manner as provided under the Act, if the promoter fails to comply or is unable to give possession of the premises in accordance with the terms of the agreement or due to dis-continuation 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 the Regulations made thereunder. The violations and reliefs provided under Section 19(4) also provide the grant of compensation alongwith the refund of the amount and interest. Thus the complainants seeking relief for violations under Section 19(4) will also be required to be placed before the adjudicating officer as they include the grant of compensation which is solely within the competency of the adjudicating officer.

39. The proviso to section 71(1) also lends credence to the conclusion to the effect that adjudicating officer is empowered to deal and adjudicate the matter regarding refund/return of the amount and compensation. The said proviso of section 71(1) is as follows :-

**71. Power to adjudicate.-**

(1) .....

*Provided that any person whose complaint in respect of matters covered under section 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, 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.*

40. A bare perusal of the aforesaid proviso makes it explicit that any person whose complaint in respect of the matters covered under sections 12, 14, 18 and 19 of the Act 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, on or before commencement of this Act, he may with 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.

41. Undisputedly the aforesaid forum or commission under the Consumer Protection Act 1986 are empowered to grant compensation and to order for refund/return of the amount if any aggrieved person has approached these forums or commission for redressal of his/her grievances. From this aforesaid proviso, it is clear that with the permission of the forum or commission, a person whose complaint is pending before this forum pertaining to the matters covered under sections 12, 14, 18 and 19 of the Act, he may file an application before the adjudicating officer under the Act. Thus it implies that as the forum or commission is empowered to grant

compensation and order for return of the amount, so necessarily the adjudicating officer under this Act is also empowered to grant compensation as well as to order for the refund and return of the amount alongwith interest.

42. As per Section 38 of the Act, the authority has power to impose penalty or interest in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents under this Act or the rules and regulations made thereunder. In this Section the legislature has used the word “interest” and not the prescribed interest. The interest has been prescribed in rule 15 of the Rules, which deals with the refund or return of the money. So, only the prescribed rate of interest is payable in case of refund and compensation. The Authority cannot award the prescribed rate of interest as in section 38 of the Act the word mentioned is only the interest and not the interest at the prescribed rate. But in case of relief for compensation, the interest is to be awarded at the prescribed rate as provided in rule 15 of the rules. It also indicates that only the adjudicating officer who is competent to grant the interest at the prescribed rate can deal with the cases where the claim is for refund and compensation.

43. Ld. Counsel for the appellants have contended that generally the complaints are filed by the allottees raising various issues and grievances with respect to the violations of the provisions of the Act, rules and regulations as well as the terms and conditions of the agreement to sell for which the adjudicating officer will have no jurisdiction. We are unable to persuade ourselves to accept these contentions as the ancillary or minor reliefs claimed in the complaint will also go to the same forums, which has competency/jurisdiction to deal with the major relief claimed in the complaint.

44. They have also contended that there is no specific prohibition to the Authority to entertain the complaints seeking refund of investment under Section 12, 18(1) and 19(4) of the Act. But again these contentions are without any substance, if we conjointly read sections 31 and 71 of the Act and rules 28 & 29 of the Rules. Rule 29 clearly provides that the Authority will have jurisdiction to entertain the complaints for any violation of the provisions of the Act or the Rules and Regulations made thereunder save as provided to be adjudicated by the adjudicating officer. In view of our considered view the relief of refund/return of investment will also go alongwith compensation to the adjudicating officer and Authority will not to be entitled to entertain such complaints.

45. The view being taken by us that adjudicating officer is competent to order the refund for violations under Sections 12, 18(1) and 19(4) will also not amount to re-write the provisions of the Act or encroaching upon the sphere of the legislature. The Courts and Tribunals are required to dispense the justice by interpreting the provisions of the Act in right prospective. We also do not find any merit in the contentions raised by Shri Jagmohan Bansal, Ld. Counsel for the appellant that it will be the matter of convenience for the complainant to approach the Authority for refund and the adjudicating officer for compensation which will create very ticklish situation as on the same bundle of facts for the same violations there will always be the scope of the different/conflicting findings, which has to be avoided. It will also create multiplicity of litigation. The instances cited by Shri Jagmohan Bansal by referring to the provisions of the taxation laws, service laws and criminal cases under the Prevention of Corruption Act, 1988, Prevention of Money Laundering Act and the Indian Penal Code are of no help to the appellants. In the taxation laws separate forums have been provided for assessment of the taxes, penalties and prosecution. Similarly in the service cases the disciplinary proceedings are to be conducted by departmental authorities as per service rules and if the act committed by the public servant also attracts the criminal offence the prosecution is to be

launched before the criminal Court. But in the Act it has not been specifically mentioned as to which forum will consider the claim regarding the refund/return of investment and in order to arrive at a conclusion we have to harmoniously interpret the provisions of Sections 31 & 71 and rules 28 & 29 of the Rules alongwith the basic principle of law that the same cause of action giving rise to the various reliefs should be placed before the same forum, which has the exhaustive jurisdiction to entertain all the claims.

46. One more point was also raised that the adjudicating officer can only entertain those complaints where the adjudication is required. They have referred to Section 72 of the Act to contend that the adjudicating officer has to adjudge the quantum of the compensation in view of the factors enumerated in Section 72 of the Act. They contended that where no adjudication is required such matters will fall within the domain of the authority. They have further contended that refund of the money will not require any adjudication as it is evident from the accounts as to how much amount has been paid by the allottee. Again this plea is devoid of merits. In our opinion both the Authority as well as the adjudicating officer have adjudicatory functions within their own sphere. Moreover the claim of refund or even interest cannot be granted mechanically. The competent forum is required to consider the claim lodge by the complainant and the defence

raised by the opposite party, which will in fact require adjudication. Chapter VIII of the Act deals with the offences, penalties and adjudication. Sections 59 to 62 show the adjudication by the Authority with respect of the penalties. Rule 28 further makes the position clear wherein the complete procedure for adjudication of the complaints has been provided to be filed before the Authority.

47. Ld. Counsel for appellants have also pleaded that in case this view is taken that the adjudicating officer will alone be entitled to deal with the complaints with respect to the refund/return of the investment alongwith interest and/including compensation then the powers of the Authority would be seriously curtailed but in our considered view that is not the correct approach and the understanding of the scheme of the Act. The Authority has multifarious functions like adjudicating the disputes relating to the penalties, prosecution, registration of projects, regulate the progress of the projects, filing of the returns and multitude of the other important functions detailed in the Act and the Rules.

48. Thus, as a result of our aforesaid discussions, we conclude and sum up our considered view in following manner :-



(i) That violations and causes of actions arising out of the same bundle of facts/rights giving rise to the multiple reliefs shall be placed before one and the same forum for adjudication in order to avoid the conflicting findings.

(ii) The complaints for the grant of relief of compensation can only be adjudicated by the adjudicating officer as per the provisions of section 71 of the Act and rule 29 of the Rules.

(iii) Similarly, if compensation is provided as a part of the multiple reliefs alongwith refund/return of investment with interest flowing from the same violation/violations and causes of action, the complaints have to be placed before the adjudicating officer exercising the powers under Sections 31, 71(1) read with rule 29 of the Rules as only the adjudicating officer is competent to deal with the relief of compensation.

49. In all the aforesaid appeals the appellants are still insisting/pressing their claim for the refund of the amount deposited by them alongwith interest. Ld. Regulatory Authority, in view of our aforesaid discussions had no jurisdiction to adjudicate upon the issue regarding refund. So, the impugned orders passed by the Ld. Authority declining the refund is without jurisdiction and cannot be sustained in the eyes of the law.

Thus all these appeals stand allowed accordingly. So, the impugned orders passed in all the appeals are hereby set-aside.

50. The complaints filed by the appellants/allottees stand transferred to the adjudicating officer of the respective authorities for adjudication in accordance with law. The adjudicating officer will allow the appellant/allottee to amend their complaint in order to bring it in the parameter of Form 'CAO' as provided in rule 29 of the Rules.

51. Before parting with this order it is pertinent to mention that we have been informed by Ld. Counsel for the parties that so far no adjudicating officer has been appointed by the Ld. Real Estate Regulatory Authority, Gurugram. The Ld. Adjudicating Officer, Panchkula, has dealt with these cases as a member of the Ld. Authority. He will also not be able to adjudicate these complaints as he had already expressed his opinion in the capacity as a member of the authority. So, the copy of this judgment/order be sent to the Ld. Principal Secretary to Govt. of Haryana, Town & Country Planning Department of Haryana and both the Ld. Authorities for taking immediate necessary steps for the appointment of the adequate number of adjudicating officers in accordance with law, so that the interest of the parties may not



suffer any longer. 52. Copy of this order be placed on the record of all the connected appeals.

53. It is made clear that this order of ours will not apply to the orders directions and decisions, which has already attained finality.

**Justice DarshanSingh(Retd)**  
**Chairman,**  
**Haryana Real Estate Appellate Tribunal,**  
**Chandigarh**  
**02.05.2019**

**Inderjeet Mehta**  
**Member (Judicial)**  
**02.05.2019**

**Anil Kumar Gupta**  
**Member (Technical)**  
**02.05.2019**