

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.309 of 2021
Date of Decision: 02.08.2022**

Monika Mittal, resident of house No.1264, Sector 21, Panchkula
(Haryana)

Appellant

Versus

M/s Samar Estates Pvt. Ltd., office at #87, Sector 7, Panchkula
(Haryana) 134 109

Respondent

CORAM:

Shri Inderjeet Mehta (Retd)

Member (Judicial)

Shri Anil Kumar Gupta

Member (Technical)

Present: Shri R.D. Gupta, Advocate,
Ld. counsel for the appellant.

Shri Kamal K. Chaudhary, Advocate,
Ld. counsel for the respondent.

ORDER:

INDERJEET MEHTA, JUDICIAL (MEMBER):

The present appeal has been preferred against the order dated 28.06.2019 passed by the learned Adjudicating Officer, Haryana Real Estate Regulatory Authority, Panchkula, whereby Complaint No.1167 of 2019, filed by appellant-allottee for refund of the amount was disposed of with the following directions:-

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“In view of the circumstances, this Authority while declining the relief of refund directs the complainant to pay all the outstanding dues as per agreed payment plan so that respondent can complete the construction of the Tower and deliver possession by 30.09.2019 failing which the respondent will be at liberty to cancel the allotment and forfeit a part of already paid amount as per terms and conditions of Flat Buyer’s Agreement.

*The complaint is, accordingly, **disposed of**. File be consigned to record room and order be uploaded on the website.”*

2. We have heard learned counsel for the parties.
3. Learned counsel for the appellant has contended that in view of the law laid down by the Hon’ble Apex Court in case ***M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. 2022(1) R.C.R. (Civil) 357***, the learned adjudicating officer has no jurisdiction to entertain and adjudicate upon the complaint filed by the appellant-allottee for refund of the amount paid by her to the respondent-promoter.
4. Learned counsel for the respondent could not repel the contentions raised by learned counsel for the appellant in view of the authoritative pronouncement of the Hon'ble Apex Court in ***Newtech Promoters’*** case (supra).
5. We have duly considered the aforesaid contentions.

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6. The appellant-allottee has filed the complaint for refund of the amount deposited by her with the respondent-promoter as the appellant has failed to honour the terms and conditions of the 'Apartment Buyer's Agreement' dated 10.01.2013.

7. The legal position has been settled by the Hon'ble Apex Court in **Newtech Promoters'** case (Supra) with respect to the jurisdiction of the Adjudicating Officer vis-à-vis the Authority as under:-

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the

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adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”

8. As per the aforesaid ratio of law, it is the learned Authority which can deal with and determine the outcome of the complaint where the claim is for refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest. So, the impugned order dated 28.06.2019 passed by the learned Adjudicating Officer is beyond jurisdiction, null and void and is liable to be set aside.

9. Consequently, the present appeal is hereby allowed. The impugned order dated 28.06.2019 is hereby set aside. The complaint is remitted to the learned Haryana Real Estate Regulatory Authority, Panchkula, for fresh trial/decision in accordance with law.

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10. Parties are directed to appear before the learned Haryana Real Estate Regulatory Authority, Panchkula on 01.09.2022.

11. The copy of this order be communicated to the parties/learned counsel for the parties and the learned Haryana Real Estate Regulatory Authority, Panchkula for information and necessary compliance.

12. File be consigned to the record.

Announced:
August 02, 2022

Inderjeet Mehta
Member (Judicial)
Haryana Real Estate Appellate Tribunal,
Chandigarh

Anil Kumar Gupta
Member (Technical)

Manoj Rana