

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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**Appeal No.202 of 2022  
Date of Decision: 05.09.2022**

Ashish Sharma, 129 Ground Floor, Navjiwan Co-operative,  
Housing Society, New Delhi-110017.

Appellant

Versus

M/s Adani M2K Projects LLP. Adani House, Plot No.83, Sector  
32, Gurgaon-122001.

Respondent

**CORAM:**

|                              |                    |
|------------------------------|--------------------|
| Shri Inderjeet Mehta (Retd.) | Member (Judicial)  |
| Shri Anil Kumar Gupta        | Member (Technical) |

Present: Shri Venket Rao, Advocate, ld. counsel for the  
appellant (Through WhatsApp).

Respondent ex parte.

**ORDER:**

**INDERJEET MEHTA, MEMBER (JUDICIAL):**

The present appeal has been preferred against the order dated 04.03.2021 passed by the learned Adjudicating Officer, Haryana Real Estate Regulatory Authority, Gurugram, whereby Complaint No.3794 of 2019, filed by appellant-allottee for refund of the amount was dismissed being not maintainable.

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2. We have heard learned counsel for the appellant, and also have perused the case file.

3. Learned counsel for the appellant has contended that in view of the law laid down by the Hon'ble Apex Court in case ***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 him to the respondent-promoter.

4. We have duly considered the aforesaid contention.

5. The appellant-allottee has filed the complaint for refund of the amount deposited by him with the respondent-promoter as the allotment of the unit, which was allotted to the appellant by the respondent-promoter, was cancelled.

6. 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*

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*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 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.”*

7. 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,

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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 04.03.2021 passed by the learned Adjudicating Officer is beyond jurisdiction, null and void and is liable to be set aside.

8. Consequently, the present appeal is hereby allowed. The impugned order dated 04.03.2021 passed by the learned Adjudicating Officer is hereby set aside. The complaint is remitted to the learned Haryana Real Estate Regulatory Authority, Gurugram, for fresh trial/decision in accordance with law.

9. Parties are directed to appear before the learned Authority on 10.10.2022.

10. The copy of this order be communicated to the parties/learned counsel for the appellant and the learned Authority for compliance.

11. File be consigned to the record.

Announced:  
September 05, 2022

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

Anil Kumar Gupta  
Member (Technical)