

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.607 of 2021
Date of Decision: 19.09.2022**

Mrs. Vishakha Bist w/o Sh. Chandu Kumar, Resident of
House No.117, Prakash City Bazpur Road, Kashipur-244713.

Appellant

Versus

1. M/s Godrej Properties, Registered Office at: Unit No.5C,
5th Floor, Godrej One Pirojshanagar, Vikhroli East,
Mumbai-400079.
2. M/s Oasis Landmarks LLP, Regional Office at:
3rd Floor, Tower B, UM House, Plot no.35, Sector 44,
Gurugram, Haryana-122001.
3. M/s Oasis Buildhome Private Limited
Registered Office at:
6, Jwala Heri Market, Near MDI Market, Paschim Vihar,
New Delhi-110063.

Respondents

CORAM:

Shri Inderjeet Mehta (Retd.)
Shri Anil Kumar Gupta

Member (Judicial)
Member (Technical)

Present: Shri Rohit Oberoi, Advocate, Id. counsel for the
appellant.

Shri Kunal Dawar, Advocate, Id. counsel for
the respondents.

ORDER:

INDERJEET MEHTA, MEMBER (JUDICIAL):

The present appeal has been preferred against the
order dated 13.09.2021 passed by the learned Adjudicating
Officer, Haryana Real Estate Regulatory Authority, Gurugram,

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whereby Complaint No.1707 of 2019, filed by appellant-allottee for refund of the amount deposited by her along with interest and compensation was allowed and following directions were issued:

“Respondent is directed to refund amount paid by complainant till now. The same may deduct up to 10% of total sale consideration according to notification mentioned above. As respondent failed to adhere to the directions of Harera Gurugram, the same is directed to pay interest on said amount @ 9.5% p.a. from the date of said notification i.e. 05.12.2018, till its realisation of amount. The respondent is also burdened with cost of litigation of Rs.50,000/- to be paid to the complainant.”

2. The appellant-allottee had booked a residential unit with the respondents-promoter on 01.05.2015. The total sale consideration amount of the unit was Rs.1,37,27,436/-. She paid the amount of Rs.5,00,000/- at the time of booking of the unit. Builder Buyer’s Agreement was executed between the parties on 11.12.2015. It was agreed that the construction would be completed within 46 months with grace period of six months.

3. It was pleaded that on 11.04.2016 the appellant received a demand notice of 20% of amount to be paid at the time of completion of super structure without getting query as to when the project was launched. Finding no option, she

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made payment of Rs.28,89,229.20 as demanded. On 01.08.2016 she received another demand for the next 40% which was actually to be paid at the time when finishing work was completed. The appellant paid the total amount of Rs.57,88,368/- to the respondents. Thereafter from August 2016 to August, 2017 she was continuously harassed and threatened by the respondents to pay as per demand raised by them. Finding no alternative, the appellant requested the respondents to cancel the allotment and to refund the amount paid by her. In response thereto, the respondents informed the appellant that the refund would be made after deducting 10% of the BSP and thus an amount of Rs.45,00,000/- would be deducted. Forced by these circumstances, the appellant-complainant filed the complaint.

4. The respondents contested the complaint by filing written statement wherein they denied the averments made in the complaint and prayed for dismissal of the complaint.

5. Vide impugned order dated 13.09.2021, the learned Adjudicating Officer allowed the complaint and issued directions as reproduced in the opening para of this order.

6. Dissatisfied with the relief granted by the learned Adjudicating Officer, the appellant-complainant has filed the present appeal.

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7. We have heard learned counsel for the parties, and also have perused the case file.

8. 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 her to the respondents-promoter.

9. Learned counsel for the respondents-promoter could not repel the contention raised by learned counsel for the appellant in view of the authoritative pronouncement of the Hon'ble Apex Court in ***Newtech Promoters'*** case (Supra).

10. We have duly considered the aforesaid contentions.

11. 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."

12. 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

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interest for delayed delivery of possession, or penalty and interest. So, the impugned order dated 13.09.2021 passed by the learned Adjudicating Officer is beyond jurisdiction, null and void and is liable to be set aside.

13. Consequently, the present appeal is hereby allowed. The impugned order dated 13.09.2021 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. The learned Authority is hereby directed to ensure the expeditious disposal of the complaint.

14. Parties are directed to appear before the learned Authority on 13.10.2022.

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

16. File be consigned to the record.

Announced:
September 19, 2022

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

Anil Kumar Gupta
Member (Technical)