

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.623 of 2021
Date of Decision: 19.09.2022**

1. M/s Oasis Landmarks LLP 3rd Floor, Town B, UM House, Plot No.35, Sector-44, Gurugram, Haryana-122001.
2. M/s Oasis Buildhome Pvt. Ltd. 6, Jwala Heri Market, Near MDI Market, Paschim Vihar, New Delhi-110063.

Appellants

Versus

1. Shri Sachin Mittal son of Shri Suresh Kumar Mittal
2. Ms. Jyoti w/o Shri Sachin Mittal,
Both RR/o 1A#702, Bharat Apartment, Plot No.8, Sector 18-A Dwarka, New Delhi-110078.

Respondents

CORAM:

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

Present: Shri Kunal Dawar, Advocate, ld. counsel for the appellants.

Shri Rohit Oberoi, Advocate, ld. counsel for the respondents.

ORDER:

INDERJEET MEHTA, JUDICIAL MEMBER:

The present appeal has been preferred against the order dated 01.09.2021 passed by the learned Adjudicating Officer, Haryana Real Estate Regulatory Authority, Gurugram, whereby Complaint No.3069 of 2020, filed by respondents-

Appeal No.623 of 2021

allottees for refund of the amount was allowed and the appellants-promoters were directed to refund the amount received from the complainants-respondents till now i.e. Rs.96,70,448.06 within 90 days from the date of order , along with interest @ 9.3% p.a. from the date of receipt till realization of the amount. The appellants were also burdened with costs of Rs.1,00,000/- to be paid to the respondents-complainants.

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

3. Learned counsel for the appellants 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 respondents-allottees for refund of the amount paid by hem to the appellants-promoter.

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

Appeal No.623 of 2021

5. We have duly considered the aforesaid contentions.
6. Respondents-allottees have filed the complaint for refund of the amount deposited by them with the appellants-promoter as the appellants have failed to honour the terms and conditions of the 'Apartment Buyer's Agreement' dated 14.12.2015.
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

Appeal No.623 of 2021

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.”

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 01.09.2021 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 01.09.2021 is hereby set aside. The complaint is remitted to the learned Haryana Real Estate Regulatory Authority, Gurugram, for fresh trial/decision in

Appeal No.623 of 2021

accordance with law. The learned Authority is hereby directed to ensure the expeditious disposal of the complaint.

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

11. The amount deposited by the appellants-promoter i.e. Rs.1,46,89,711 /- with this Tribunal to comply with the proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016, along with interest accrued thereon, be sent to the learned Authority for disbursement to the appellants-promoter subject to tax liability, if any, as per law and rules.

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

13. 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)