

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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**Appeal No.434 of 2021  
Date of Decision: 12.07.2022**

M/s Cosmo Infra Engineering (India) Private Limited, 4,  
Battery Lane, Rajpur Road, Civil Lines, New Delhi.

Appellant

Versus

1. Mr. Sudip Roy, The Establishment Bangsar, Jalan Ang  
Seng, Brickfields, 50470 Kuala Lumpur Wilaya  
Persekutuan, Kuala Lumpur, Malaysia.

2<sup>nd</sup> Address:

K-2082, Ground Floor, Chittranjan Park, New Delhi-  
110054.

Respondent

2. Shivnandan Buildtech Pvt. Ltd. 4, Battery Lane, Rajpur  
Road, Civil Lines, New Delhi.

Proforma Respondent

**CORAM:**

Shri Inderjeet Mehta (Retd)

Member (Judicial)

Shri Anil Kumar Gupta

Member (Technical)

**Argued by:**

Shri Gaurav Chopra, Ld. Senior Advocate with  
Shri Verdaan Seth, Advocate, ld. counsel for  
the appellant.

Shri Chandan Goswami, Advocate, ld. counsel  
for respondent no.1.

Service of respondent no.2 already dispensed  
with.

**Appeal No.434 of 2021****ORDER:****INDERJEET MEHTA, JUDICIAL MEMBER:**

The present appeal has been preferred against the order dated 15.02.2021 passed by the learned Adjudicating Officer, Haryana Real Estate Regulatory Authority, Gurugram, whereby Complaint No.131 of 2018, filed by respondent no.1 - allottee for refund of the amount was allowed with the following directions:-

- “i) To refund the entire amount of Rs.52,73,405/- besides interest @ 9.3% p.a. from the date of receipt of each payment till payment of whole amount is paid to the complainant.*
- ii) The respondents are also liable to pay a sum of Rs.20,000/- as compensation inclusive of litigation charges to the claimant.”*

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 ***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 respondent-allottee

**Appeal No.434 of 2021**

for refund of the amount paid by him to the appellant-promoter.

4. Learned counsel for the respondent no.1 - allottee 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). However, he has submitted that since the appellant-promoter after receipt of the notice had put up in appearance before the learned Adjudicating Officer and by way of filing reply had contested the complaint filed by the respondent no.1- allottee, so he cannot raise the objections regarding the jurisdiction of the learned Adjudicating Officer to adjudicate the controversy between the parties.

5. We have duly considered the aforesaid contentions.

6. Respondent no.1-allottee has filed the complaint for refund of the amount deposited by him with the appellant-promoter as the appellant has failed to honour the terms and conditions of the 'Flat Buyer's Agreement' dated 20.08.2013.

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:-

**Appeal No.434 of 2021**

“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 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

**Appeal No.434 of 2021**

*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. Regarding contention of learned counsel for respondent no.1 that the appellant-promoter by way of contesting the claim of respondent no.1 – allottee before the learned Adjudicating Officer had accepted the jurisdiction of the learned Adjudicating Officer to adjudicate the controversy, it is suffice to say that the jurisdiction regarding subject matter is totally distinct and stands on a different footing. If a Court/Authority/Forum has no jurisdiction over the subject matter, any order passed by Court/Forum or Authority having no jurisdiction is nullity. So, the impugned order dated 15.02.2021 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 15.02.2021 is hereby set aside. The complaint is remitted to the learned Haryana Real Estate

**Appeal No.434 of 2021**

Regulatory Authority, Gurugram, for fresh trial/decision in accordance with law.

10. Parties are directed to appear before the learned Authority on 01.08.2022.

11. The amount deposited by the appellant-promoter i.e. Rs.89,03,751/- with this Tribunal to comply with the provisions of 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 appellant-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:  
July 12, 2022

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

Anil Kumar Gupta  
Member (Technical)