

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.321 of 2022

Date of Decision: 30.11.2022

MVN Infrastructure Private Limited, Registered Office at
58A/1, Kalu Sarai, New Delhi-110016.

Appellant

Versus

1. Shri Pawan Tiwari, 460A, Jawahar Colony, Faridabad-121005.
2. Ms. Priyanka Tiwari, 460A, Jawahar Colony, Faridabad-121005.

Respondents

CORAM:

Shri Inderjeet Mehta
Shri Anil Kumar Gupta

Member (Judicial)
Member (Technical)

Present:

Shri Yashpal Sharma, Advocate, proxy for Ms. Rupa Pathania, Advocate, ld. counsel for the appellant.

Shri Neeraj Goel, Advocate, ld. Counsel for the respondents.

ORDER:

INDERJEET MEHTA, MEMBER (JUDICIAL):

The present appeal has been preferred against the order dated 14.10.2021 passed by the learned Adjudicating Officer, Haryana Real Estate Regulatory Authority, Gurugram, whereby Complaint No.4996 of 2019, filed by respondents-

Appeal No. 321 of 2022

allottees for refund of the amount was allowed and the appellant-promoter was directed to refund the amount received from the complainants i.e. Rs.18,18,121/- to them within 90 days from the date of order along with interest @ 9.30% p.a. from the date of payment till its realization. The appellant was also burdened with litigation costs of Rs.50,000/- to be paid to the respondents/allottees.

2. We have heard learned counsel for the parties 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 respondents-allottees for refund of the amount paid by them to the appellant-promoter.

4. The respondents - allottees 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.

Appeal No. 321 of 2022

6. Respondents-allottees have filed the complaint for refund of the amount deposited by them with the appellant-promoter as the appellant has failed to honour the terms and conditions of 'Flat Buyer's Agreement' which was executed on 10.02.2015.

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 a question of seeking the relief of adjudging compensation and interest thereon

Appeal No. 321 of 2022

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 14.10.2021 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 14.10.2021 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 directed to

Appeal No. 321 of 2022

expeditiously dispose of the complaint preferred by the respondents/allottees within a period of two months.

10. Parties are directed to appear before the learned Authority on 12.12.2022.

11. The amount deposited by the appellant-promoter i.e. Rs.28,60,899/- 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:
November 30, 2022

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

Anil Kumar Gupta
Member (Technical)