

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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**Appeal No.496 of 2022**

**Date of Decision: 08.12.2022**

M/s Vatika Limited, 7<sup>th</sup> Floor, Vatika Triangle, Sushant Lok,  
Phase-I, Mehrauli, Gurugram Road, Gurugram-122002.

Appellant

Versus

Girdhari Lal son of Shri Jaynarayan, Resident of V.P.O.  
Sarhaul, Tehsil and District Gurugram.

Respondent

**CORAM:**

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

**Argued by:** Shri Kamaljeet Dahiya, Advocate, Id. Counsel  
for the appellant.

Shri S.K. Yadav, Advocate, Id. Counsel for the  
respondent.

**ORDER:**

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

Feeling aggrieved by the order dated 12.05.2022,  
handed down by the learned Adjudicating Officer of Haryana  
Real Estate Regulatory Authority, Gurugram, in Complaint  
No.E/5771/667/2018, titled "Girdhari Lal vs. Vatika Limited",  
vide which an application preferred by the  
appellant/Judgment Debtor to recall the order of arrest issued

against the Directors of appellant/J.D., was dismissed and the Commissioner of Police, Gurugram, was again directed to arrest the directors of appellant/J.D. and produce them before the learned Adjudicating Officer, the appellant/J.D. has chosen to prefer the present appeal.

2. The respondent/Decree Holder had preferred a complaint no.667/2018 titled "Girdhari Lal vs. Vatika Limited", before the learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority'), claiming refund of the amount of Rs.56,02,500/-, which he had deposited with the appellant qua a commercial unit booked by him. Though, the said complaint was resisted by the appellant/JD by way of filing reply, but the relief of refund was allowed to the respondent/Decree Holder vide order dated 10.01.2019 and relevant portion of the said order is as follows:-

*"(i) The respondent is directed to refund to the complainants the principal sum of Rs.56,02,500/- paid by them along with interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainant. The interest will be given from date of receipt of payments till realization of amount to the complainant within a period of 90 days from the date of this order."*

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3. Since, in spite of the aforesaid order, the said amount was not paid to the respondent/decreed holder, so, he preferred complaint No.E/5771/667/2018, titled "Girdhari Lal vs. Vatika Limited", to execute the aforesaid order dated 10.01.2019 to realize the said amount.

4. During the execution proceedings, learned Adjudicating Officer of the learned Authority passed the impugned order dated 12.05.2022, which is as follows:-

*"Arrest warrants were issued against directors of JD. Commissioner of Police, Gurugram was directed to get them arrested and produce before this forum till today. No report in this regard has been filed.*

*A cheque of Rs.88,427/- is handed over to DH today on behalf of JD who has accepted it as part payment. Heard on an application filed by JD with request to recall order of arrest issued against directors of JD. As per AR of JD, entire balance amount i.e. 8,00,000/- has been paid to DH. All it is disputed by DH. According to him, interest component is calculated is up to 31.03.2022 but as per decree under execution, interest was to be paid up to the date of realisation of entire amount.*

*True, as per decree under execution, JD/respondent is liable to pay interest till realization of entire amount. No reason to recall order of arrest of directors at this point of time.*

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*Commissioner of Police, Gurugram be again directed to arrest directors of JD and produce them before this forum on or before next date.*

*To come 12.07.2022, the date already fixed.”*

5. The appellant/JD felt aggrieved, hence, the present appeal.

6. We have heard learned counsel for the parties and have meticulously examined the record of the case.

7. Learned counsel for the appellant has submitted that the impugned order dated 12.05.2022 is without jurisdiction as the learned Adjudicating Officer of the learned Authority is not legally empowered to execute the order dated 10.01.2019 handed down by the learned Authority in Complaint No.667/2018 titled “Girdhari Lal vs. Vatika Limited”, vide which the complaint filed by the respondent for refund of the amount of Rs.56,02,500/- was allowed along with interest at prescribed rate. Further, it has been submitted that the order dated 28.07.2021 (Annexure A2) available at page no.59 of the paper-book, passed by the learned Authority delegating powers, to execute its order for refund, to the learned Adjudicating Officer, is beyond the jurisdiction of the Authority. Thus, the impugned order is apparently illegal, without jurisdiction and is liable to be set aside. Reliance has been placed upon citation **Newtech**

***Promoters & Developers Pvt. Ltd. vs. State of UP & Ors.  
Etc. 2022(1) R.C.R. (Civil) 357.***

8. Learned counsel for the appellant has also submitted that, in fact, the amount which the respondent/J.D. has sought to realize by way of preferring the execution, has already been deposited with the learned Authority and thus the claim set up by the respondent in the execution stands fully satisfied. With these submissions, learned counsel for the appellant has requested for acceptance of the appeal and setting aside the impugned order.

9. Per contra, learned counsel for the respondent has submitted that the entire decretal amount, as has been sought by way of execution, has not been received by the respondent. Further, it has been submitted that the learned Authority is legally competent to delegate its powers to the learned Adjudicating Officer to execute its order for refund, in view of the provision of Section 81 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'), which empowers the Authority to delegate any of its powers and functions, other than the power to frame regulation under Section 85, to any member or officer of the Authority (or any other person), subject to any condition specified in the order. Learned counsel for the respondent has submitted that there is no illegality and irregularity in the

impugned order handed down by the learned Adjudicating Officer and the present appeal deserves to be dismissed.

10. We have duly considered the aforesaid submissions.

11. At the outset, it is pertinent to mention that there is no dispute to the proposition of law as laid down in **Newtech Promoters'** case (Supra), wherein the Hon'ble Apex Court has laid down that when there is a dispute with respect to the 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 power to examine and determine the outcome of the 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.

12. Undisputedly, the order dated 10.01.2019, which has been sought to be executed by way of execution by the respondent/D.H., has been handed down by the learned Authority and the respondent/D.H. has been held entitled to the refund to the tune of Rs.56,02,500/- with interest at the prescribed rate of 10.75% per annum from the date of receipt of payments till realisation of the amount.

13. To authorise the learned Adjudicating Officer to execute its order dated 10.01.2019, the learned Authority on 28.07.2021 had handed down the following order (Annexure A2) available at page no.59 of the paper-book:-

*“ The present execution petition relates to refund of the deposited amount with the JD. The relief sought by the decree holder is to be dealt with by the Adjudicating Officer. File be transferred to the Adjudicating Officer for appropriate action.*

*Both the parties are directed to appear there on 26.08.2021.”*

14. The legality and validity of this aforesaid order dated 28.07.2021, has also been assailed by learned counsel for the appellant by submitting that only learned Authority which had passed the order for refund, was legally competent to execute its order. The answer to this aforesaid submission of the learned counsel for the appellant has been provided by our own Hon'ble High Court in its decision dated 17.08.2022, handed down in **CWP No.7738, 7750 and 9942 of 2022**, lead case titled as ***M/s International Land Developers Private Limited vs. Aditi Chauhan and Others***, and the relevant part of the said order is as follows:-

*“99. Again it is to be noticed that though learned senior counsel for the petitioner argued that the office order dated 16.03.2022 passed by the Authority, thereby delegating its powers upon the Adjudicating*

*Officer to hear an execution application filed by respondent no.3 herein (complainant), 74 of 80 is beyond the jurisdiction of the Authority and consequently the order passed by the AO in such execution proceedings on 30.03.2022 is also without jurisdiction; yet, we agree with learned counsel for the respondent Authority that with Section 81 of the Act empowering the Authority to delegate any of its powers and functions, other than the power to frame regulations under Section 85, to any member or officer of the Authority (or any other person), subject to any condition specified in the order, such delegation vide the said order dated 16.03.2022 (Annexure P-26) cannot be held to be beyond such power conferred upon the Authority.*

*It is to be observed that execution of orders is a function that can be effectively carried out by the Adjudicating Officer, especially with Section 71 of the Act stipulating that such officer would be a person who is or has been a District Judge. Thus, very obviously such Adjudicating Officer would be completely familiar with the manner of execution of a decree issued or order passed in civil proceedings; and consequently would be the appropriate person to execute his own orders as also those of the Tribunal/ Authority under the Act.”*

15. Thus, in view of the aforesaid observations of the Hon'ble High Court, the learned Adjudicating Officer, who has handed down the impugned order, is legally entitled to pass such order.



16. Now, to arrive at the conclusion as to what amount so far has been realized and what remains to be realized, let us have a look at page 13, 14 and 15 of the paper-book wherein, while preferring the appeal, the appellant has pleaded that in compliance of the direction passed by the learned Adjudicating Officer, the bank manager of HDFC Bank froze the said bank account, wherein the last balance was Rs.1,90,39,422.33 and the said amount was ordered to be released to the account of the learned Authority for satisfaction of the decretal amount of two execution petitions i.e. E/5771/667/2018 (relevant for the present case) and petition no.5901/668/2018. The execution petition no. E/5901/668/2018 stood fully satisfied and rest of the amount had been adjusted against execution no. E/5771/667/2018 i.e. execution of the present case. As per the table given by the appellant in para no.IX at page 14 of the appeal, the amount payable as per the calculation of DH was Rs.1,00,04,080/- and after deduction of TDS, the payable amount is Rs.95,63,922/-.

17. Learned counsel for the respondent has submitted that this amount of Rs.95,63,922/- is deposited with the learned Authority and on account of the pendency of the present appeal, so far, this amount has not been released to the respondent/D.H.

18. This fact has not been disputed by learned counsel for the appellant and in these circumstances, the learned Authority is hereby directed to release this amount of Rs.95,63,922/- to the respondent/D.H. without any further delay as per rules and procedure.

19. The only bone of contentions between the parties to the present list now is regarding the calculation of interest. As per learned counsel for the respondent while making the payment, the appellant has only calculated interest up to 31.03.2022, whereas, as per the order dated 10.01.2019, which has been sought to be executed, the interest has to be given to the respondent/D.H. from the date of the receipt of payment till realisation of the amount to the complainant.

20. Since, now the dispute between the parties is only regarding entitlement of interest after 31.03.2022 on the deposited amount, so, the learned Adjudicating Officer is hereby directed to dispose of the said dispute between the parties in the execution proceedings pending before him and to realize this amount of interest, there is absolutely no justification for issuance of arrest warrants, at this stage, against the Directors of J.D. specifically when the substantial part of the decretal amount has already been deposited with the learned Authority and as mentioned in the impugned order, a cheque of the amount of Rs.88,427/- was handed over

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to the D.H. and there is also reference of making payment of entire balance amount of Rs.8,00,000/- to the D.H. in the impugned order.

21. Thus, as a consequence to the aforesaid discussion, the present appeal preferred by the appellant is hereby allowed and the impugned order dated 12.05.2022 is set aside. The learned Adjudicating Officer is directed to adjudicate upon the amount of interest, which, if any, the appellant is liable to pay to the respondent, expeditiously. In case, the balance amount as arrived at by the learned Adjudicating Officer is not paid by the appellant/J.D. within a period of 30 days of finalizing the interest amount, then, the learned Adjudicating Officer may realize the same as per law.

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

23. File be consigned to the record.

Announced:  
December 08, 2022

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

Anil Kumar Gupta  
Member (Technical)