

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.143 of 2022

Date of Decision: 09.12.2022

Mrs. Renu Bohra w/o Mr. Ramesh Bohra, Resident of V-II/4
DLF City Phase 3, Gurugram, Haryana-122002.

Appellant

Versus

M/s Revital Reality Private Limited C/o Supertech Limited,
Resident of 1114, 11th Floor, Hemkunt Chamber, 89, Nehru
Place, New Delhi-110019.

Respondent

CORAM:

Shri Inderjeet Mehta

Member (Judicial)

Shri Anil Kumar Gupta

Member (Technical)

Present: Shri Kuldeep Kumar Kohli, Advocate, learned
counsel for the appellant.

Shri Harsh Goyal, Advocate, learned Counsel for
the respondent.

ORDER:

INDERJEET MEHTA, MEMBER (JUDICIAL):

The present appeal has been preferred against the
order dated 05.04.2021 passed by the learned Adjudicating
Officer, Haryana Real Estate Regulatory Authority, Gurugram,
whereby Complaint No.5482 of 2019 (along with other two
complaints no.1061/2020 and 3303/2020), filed by appellant-

Appeal No. 143 of 2022

allottee for refund of the amount was allowed issuing directions as follows:-

“i) To refund the entire amount of Rs.20,15,001/-, Rs.14,94,590/- and Rs.7,17,855/- minus Rs.25,000/- from each set of complaints within a period of 90 days from the date of this order failing which the respondent would be liable to pay interest @ 9.30% p.a. to the complainants from the expiry of 90 days’ period.”

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 appellant-allottee for refund of the amount paid by her to the respondent-promoter.

4. Learned counsel for the respondent/promoter 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. 143 of 2022

6. It is an admitted fact that in the complaint as well as in the grounds of appeal, the appellant-allottee is seeking refund of the entire amount deposited by her with the respondent-promoter along with interest and compensation. The appellant-allottee has filed the complaint for refund of the amount deposited by her with the respondent-promoter as the respondent has failed to honour the terms and conditions of 'Flat Buyer's Agreement' which was executed on 27.04.2016.

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

Appeal No. 143 of 2022

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.”

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 05.04.2021 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 05.04.2021 is hereby set aside. The complaint is remitted to the learned Haryana Real Estate

Appeal No. 143 of 2022

Regulatory Authority, Gurugram, for fresh trial/decision in accordance with law. The learned Authority is directed to expeditiously dispose of the complaint preferred by the appellant/allottee within a period of two months.

10. Parties are directed to appear before the learned Authority on 20.12.2022.

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

12. File be consigned to the record.

Announced:
December 09, 2022

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

Anil Kumar Gupta
Member (Technical)

CL

Appeal No. 143 of 2022

Renu Bohra vs. Revital Realty Pvt. Ltd.
Appeal No.143 of 2022

Present: Shri Kuldeep Kumar Kohli, Advocate, learned counsel for the appellant.

Shri Harsh Goyal, Advocate, learned Counsel for the respondents.

In response to the notice issued by this Tribunal, Shri Harsh Goyal, Advocate, has put in appearance on behalf of the respondents and has filed the Power of Attorney as well as Board Resolution. The same are taken on record.

Arguments heard.

Vide our separate detailed order of the even date, the appeal is allowed. The impugned order dated 05.04.2021 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 expeditiously dispose of the complaint preferred by the appellant/allottee within a period of two months.

Parties are directed to appear before the learned Authority on 20.12.2022.

Copy of the detailed order be communicated to the parties/learned counsel for the parties and the learned Authority for compliance.

File be consigned to the record.

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

Anil Kumar Gupta
Member (Technical)

December 09, 2022
CL