

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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**Appeal No.394 of 2021**

**Date of Decision: 12.12.2022**

1. M/s Mascot Buildcon Private Limited
  2. M/s Hometown Properties Private Limited
- Both Residents of 294/1, Vishakarma Colony, Opp ICD,  
M.B. Road, Lal Kuan, New Delhi-110044.
- Appellants

Versus

Gajendra Singh and Neelam Singh,  
R/o Flat No.705, Block-C, NCC Meadows, Phase-I,  
Doddabalapur Road, Yelhanka New Town, Bangalore-560064.

Respondents

**CORAM:**

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

**Present:** Shri Gulshan Sharma, Advocate, Id. counsel for the appellants.

Shri Keshav Sharma, Advocate, Id. Counsel for the respondents. (Through WhatsApp Video)

**ORDER:**

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

The present appeal has been preferred against the order dated 22.07.2021 handed down by the learned

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Adjudicating Officer, Haryana Real Estate Regulatory Authority, Gurugram, whereby Complaint No.456 of 2021, filed by respondents- allottees for refund of the amount was allowed issuing directions as follows:-

*“11. Considering facts discussed above, the complaint in hands is allowed and the respondents are directed to refund the amount already paid by the complainants i.e. Rs.22,24,516/- alongwith interest @ 9.30% p.a. from the date of each payment till realising of amount. In addition to this, respondents are also directed to pay a sum of Rs.1,00,000/- (One lac) as litigation expenses and further Rs.1,00,000/- (One lac) as compensation for mental agony and harassment suffered by the complainants. Payment is to be made within a period of 90 days from date of this order.*

*12. This forum does not think it proper to initiate any criminal proceedings against respondents, as prayed but the complainants are at liberty to approach the appropriate forum/police against the respondents for cheating and fraud (if any) if same thinks fit.”*

2. We have heard learned counsel for the parties and also have perused the case file. Learned counsel for the respondents has also filed written submissions.

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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 them to the appellants-promoters.

4. Learned counsel for the respondents - allottees could not repel the contentions raised by learned counsel for the appellants 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.

6. Respondents-allottees have filed the complaint for refund of the amount deposited by them with the appellants-promoters as the appellants have failed to honour the terms and conditions of 'Flat Buyer's Agreement' which was executed on 28.04.2016.

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:-

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“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 under Section 71 and that would be against the mandate of the Act 2016.”

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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 22.07.2021 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 22.07.2021 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 respondents/allottees within a period of two months.

10. Parties are directed to appear before the learned Authority on 09.01.2023.

11. The amount deposited by the appellants-promoters i.e. Rs.36,77,595/- 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

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disbursement to the appellants-promoters 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:  
December 12, 2022

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

Anil Kumar Gupta  
Member (Technical)

CL

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M/s Mascot Buildcon Pvt. Ltd.

vs.

Gajendra Singh & Anr.  
Appeal No.394 of 2021

Present: Shri Gulshan Sharma, Advocate, Id. counsel for the appellants.

Shri Keshav Sharma, Advocate, Id. Counsel for the respondents. (Through WhatsApp Video)

File has been taken up today on the request of both the learned counsel for the parties. They have stated that in fact the case is fixed for today but due to inadvertence, the date of hearing has been typed and uploaded on the website as 14.12.2022.

Learned counsel for the respondents has filed written submissions. 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 22.07.2021 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 respondents/allottees within a period of two months.

Parties are directed to appear before the learned Authority on 09.01.2023.

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 12, 2022

CL