

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.320 of 2022

Date of Decision: 21.12.2022

M/s 1000 Trees Housing Private Limited, A-793, 1st Floor, G.D. Colony, Mayur Vihar, Phase-III, near Hanuman Mandir, Delhi East-110096.

Appellant

Versus

1. Shri Pardeep Verma

2. Ms. Sonia Verma

Both Residents of 131, Sector-29, Faridabad, Haryana.

Respondents

CORAM:

Shri Inderjeet Mehta
Shri Anil Kumar Gupta

Member (Judicial)
Member (Technical)

Present: Shri Vivek Sethi, Advocate, learned counsel for the appellant.

Shri Ishwar Singh Sangwan, Advocate, learned counsel for the respondents.

ORDER:

INDERJEET MEHTA, MEMBER (JUDICIAL):

The present appeal has been preferred against the order dated 18.10.2021 handed down by the learned Adjudicating Officer of Haryana Real Estate Regulatory Authority, Gurugram, ((hereinafter called 'the Authority'),

whereby Complaint No.3384 of 2019, filed by respondents-allottees for refund of the amount was allowed and the appellant-promoter was directed to refund Rs.25,15,125/- i.e. the amount received from the respondents/complainants, to them within 90 days from the date of order, along with interest @ 9.30% p.a. from the date of each payment till realization of amount. The appellant was also burdened with costs of litigation 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. Learned counsel for the respondents/allottees has submitted that the present matter has already been unnecessarily delayed by the appellant. Further, it has been submitted that if the matter is remitted back to the learned Authority for fresh decision, then, necessary instructions may

be issued to the learned Authority for expeditious disposal of the matter as the same has already been considerably delayed.

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 appellant/promoter as the appellant has failed to honour the terms and conditions of 'Builder Buyer Agreement' which was executed on 15.04.2015.

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 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 18.10.2021 passed by the learned Adjudicating Officer is beyond jurisdiction, null and void and is liable to be set aside.

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9. Consequently, the present appeal is hereby allowed. The impugned order dated 18.10.2021 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 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 appellant/promoter i.e. Rs.33,90,572/- 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:
December 21, 2022

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

Appeal No. 320 of 2022

Anil Kumar Gupta
Member (Technical)

CL

M/s 1000 Trees Housing Private Limited

Vs

Pardeep Verma & Anr.

Appeal No.320 of 2022

Present: Shri Vivek Sethi, Advocate, learned counsel for the appellant.

Shri Ishwar Singh Sangwan, Advocate, learned counsel for the respondents.

In response to the notice issued by this Tribunal, Shri Ishwar Singh Sangwan, Advocate, has appeared on behalf of the respondents and has filed his 'Power of Attorney'.

Learned counsel for the respondents has also filed reply to the application for condonation of delay as well as reply to the appeal.

There is no prescribed procedure to file reply to the appeal preferred by the appellant.

Though, the respondents have resisted the delay of 129 days in filing of the present appeal, but, as mentioned in the interlocutory order dated 21.11.2022, the delay of 129 days has already been condoned by this Tribunal. Moreover, the law is well settled that litigation between the parties should be adjudicated on merits and not on technicalities.

Arguments heard.

Vide our separate detailed order of the even date, the appeal is allowed, the impugned order is set aside and the case is remitted to the learned Haryana Real Estate Regulatory Authority, Gurugram for fresh decision of the complaint in accordance with law.

Appeal No. 320 of 2022

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

The amount deposited by the appellant/promoter i.e. Rs.33,90,572/- 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.

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 record.

Announced:
December 21, 2022

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

Anil Kumar Gupta
Member (Technical)

CL