BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.611 of 2021
Date of Decision: 17.10.2022

M/s Pareena Infrastructures Private Limited,
C-1(7A), 2nd Floor, Omaxe City Centre, Sohna Road, Gurugram, Haryana.

Appellant

Versus

Mr. Albert Vijay Singh, Flat No.N-216, Jalvayu Tower, Sector-56, Gurugram.

Respondent

CORAM:

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

Present: Shri Yashvir Singh Balhara, Advocate, ld. counsel f for the appellant.

Shri Gaurav Madan, Advocate, ld. counsel for the respondent.

O R D E R:

INDERJEET MEHTA, MEMBER (JUDICIAL):

The present appeal has been preferred against the order dated 15.09.2021 passed by the learned Adjudicating Officer, Haryana Real Estate Regulatory Authority, Gurugram, whereby Complaint No.1590 of 2019, filed by respondent-allottee for refund of the amount was allowed and the appellant-promoter was directed to refund the amount of Rs.12,44,811/- to the complainant-allottee as received from

him till date, within 90 days from the date of order along with interest @ 9.3% p.a. from the date of receipt of each payment till realization. The appellant was also burdened with costs of Rs.50,000/- to be paid to the respondent/allottee.

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

4. Learned counsel for the respondent-allottee 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.

6. Respondent-allottee has filed the complaint for refund of the amount deposited by him with the appellant-promoter as the appellant despite receipt of around 22% cost

of the dwelling unit, has failed to tell the exact name of the project as well as to execute the builder buyer's agreement.

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 15.09.2021 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 15.09.2021 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.

10. Parties are directed to appear before the learned Authority on 14.11.2022.

11. The amount deposited by the appellant-promoter i.e. Rs.21,68,440/- with this Tribunal to comply with the

provisions of 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 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:
October 17, 2022

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

Anil Kumar Gupta
Member (Technical)

CL

Appeal No.611 of 2021

Pareena Infrastructure Pvt. Ltd.
Vs.
Albert Vijay Singh

Appeal No. 611 of 2021

Present: Shri Yashvir Singh Balhara, Advocate, ld. counsel f for the appellant.

Shri Gaurav Madan, Advocate, ld. counsel for the respondent.

Today, on behalf of the respondent, Shri Gaurav Madan, Advocate has filed the Power of Attorney. The same is taken on record.

An application for setting aside the ex-parte order dated 29.09.2022 handed down by this Tribunal has also been filed.

Ld. counsel for the appellant has no objection if the ex-parte proceedings dated 29.09.2022 against the respondent are set aside.

In view of no objection given by ld. counsel for the appellant, the application filed by the respondent is hereby allowed and the ex-parte proceedings dated 29.09.2022 against the respondent are set aside.

Arguments heard.

Vide our separate detailed order of the even date, the appeal is allowed. The impugned order dated 15.09.2021 is set aside. The case is remitted to the learned Haryana Real Estate Regulatory Authority, Gurugram, for fresh trial/decision in accordance with law.

Parties are directed to appear before the learned Authority on 14.11.2022.

The amount deposited by the appellant-promoter i.e. Rs.21,68,440/- with this Tribunal to comply with the provisions of 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 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:
October 17, 2022
CL

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

Anil Kumar Gupta
Member (Technical)