

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.199 of 2022
Date of Decision: 17.10.2022**

1. M/s Oasis Landmarks LLP
3rd Floor, Town B, UM House, Plot No.35, Sector-44,
Gurugram, Haryana-122001.

2. M/s Oasis Bildhome Pvt. Ltd.
6, Jwala Heri Market, near MDI Market, Paschim Vihar,
New Delhi-110063.

Appellants

Versus

Ms. Shelly Chaudhary w/o Shri Rajeev
R/o A-1, Patel Nagar Air Force, Jodhpur Residency Road,
Jodhpur, Rajasthan.

Respondent

CORAM:

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

Present: Shri Kunal Dawar, Advocate, Id. counsel for
the appellant (through WhatsApp).

Shri Aashish Chaudhary, Authorised
representative of the respondent.

ORDER:

INDERJEET MEHTA, MEMBER (JUDICIAL):

The present appeal has been preferred against the
order dated 06.10.2021 passed by the learned Adjudicating
Officer, Haryana Real Estate Regulatory Authority, Gurugram,

Appeal No.199 of 2022

whereby Complaint No.3040 of 2020, filed by respondent-allottee for refund of the amount was allowed and the appellants-promoter were directed to refund the amount received from the complainant i.e. Rs.98,01,900/-, within 90 days from the date of order, along with interest @ 9.3% p.a. from the date of receipts till realization of amount. The appellants were also burdened with costs of Rs.1,00,000/- to be paid to the respondent/allottee.

2. We have heard learned counsel for the appellant, Shri Aashish Sardana, authorised representative of the respondent and also have perused the case file.

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

4. The authorised representative of the respondent-allottee could not repel the contentions raised by learned counsel for the appellant in view of the authoritative

Appeal No.199 of 2022

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 her with the appellants-promoter as the appellants have failed to honour the terms and conditions of the builder buyer's agreement which was executed on 15.01.2016.

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

Appeal No.199 of 2022

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 06.10.2021 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 06.10.2021 is hereby set aside. The

Appeal No.199 of 2022

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 07.11.2022.

11. The amount deposited by the appellant-promoter i.e. Rs.1,46,06,062/- 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 appellants-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:
October 17, 2022

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

Anil Kumar Gupta
Member (Technical)