

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.676 of 2022

Date of Decision: 03.03.2023

Silverglades Infrastructure Private Limited through its authorised representative Mr. Kamal Saini,
Registered Office: 404, Nirmal Tower, 26 Barakhamba Road,
New Delhi-110001.

Corporate Office: 5th floor, Times Square Building, B-Block,
Sushant Lok Phase-I, Gurugram, Haryana through its
authorised representative Mr. Harsh Kumar Gupta.

Appellant

Versus

Usha Sharma, Resident of House No.P-6/1, DLF City, Phase-2,
Gurugram, Haryana.

Respondent

CORAM:

Justice Rajan Gupta	Chairman
Shri Inderjeet Mehta,	Member (Judicial)
Shri Anil Kumar Gupta,	Member (Technical)

Argued by: Shri Ashwarya Sinha, Advocate for the
appellant.

Shri Nitin Jaspal, Advocate for the respondent.

ORDER:

INDERJEET MEHTA, MEMBER (JUDICIAL):

The present appeal has been preferred by the
appellant/promoter against the order dated 13.10.2021

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passed by the learned Adjudicating Officer, Haryana Real Estate Regulatory Authority, Gurugram, whereby Complaint No.3146 of 2020, filed by respondent- allottee for refund of the amount was allowed. The operative part of the impugned order is reproduced as under:-

“21. According to ABA, project land was owned by M/s Magnitude Properties Pvt. Ltd. The project land owner entered into collaboration agreement. Though, irrevocable power of attorney, said land owner assigning the project land with M/s Everlike Buildcom Pvt. Ltd. i.e. respondent No.2. The later is stated to have been formally merged with M/s Silverglades Infrastructure Pvt. Ltd. i.e. respondent No.1. The complainant claims to have made payment in favour of respondent No.2. Both of these respondents are thus jointly and severally responsible towards the complainant. Respondents are thus, directed to refund the amount of complainant i.e. Rs.11,60,000/- within a period of 90 days along with interest @ 9.30% p.a. from the date of each payment till realisation. Cost of litigation of Rs.1,00,000/- is also imposed upon the respondents to be paid to the complainant.”

2. We have heard learned counsel for the parties and also have perused the case file.

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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 her to the appellant-promoter.

4. The 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 her with the appellant-promoter as the appellant has failed to honour the terms and conditions of 'Apartment Buyer Agreement' which was executed on 17.04.2015.

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:-

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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 13.10.2021 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 13.10.2021 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 dispose of the complaint expeditiously preferably within a period of two months.

10. Parties are directed to appear before the learned Authority on 21.03.2023.

11. The amount deposited by the appellant-promoter i.e. Rs.22,90,409/- with this Tribunal to comply with the 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

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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:
March 03, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

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