

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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**Appeal No.585 of 2022**

**Date of Decision: 03.05.2023**

Satya Pal Malik son of late Shri Rai Singh Malik, Resident of 3S-304, Gurjinder Vihar, AWHO Township, CHI-1, Sector Greater Noida, U.P. – 201310.

Appellant

Versus

Ocus Skyscrapers Realty Limited, C-94, First Floor, Shivalik, New Delhi-110017.

Respondent

**CORAM:**

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

**Present:** Shri Prateek Singh, Advocate  
On behalf of Sh. Shvetanshu Goel, Advocate,  
for the appellant.  
Shri Anuj Dewan, Advocate,  
for the respondent.

**ORDER:**

**RAJAN GUPTA, CHAIRMAN:**

The present appeal has been preferred against the order dated 31.08.2021 passed by the Adjudicating Officer, Haryana Real Estate Regulatory Authority, Gurugram, whereby Complaint No.5909 of 2019, filed by appellant-allottee for refund of the amount was dismissed. The operative part of the impugned order is reproduced as under:-

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“14. The complainant had requested for the refund of the amount paid by him due to his financial restrains which is evident from the email dated 15.09.2019 (Annexure R-6). The consent form dated 23.01.2018 and consent letter dated 07.08.2018 (Annexure R9) are duly signed by the complainant, which prove that the change of unit was not unilateral and complainant himself had given his consent for the management of unit and leasing out the same. The respondent offered the possession of the unit vide letter dated 23.07.2019, but instead of taking possession of the allotted unit, the complainant approached this forum for refund of the amount, which is not maintainable.

15. Considering the facts of the case, no ground for the refund is made out and request for the same is declined. Complaint in hands is thus, dismissed.”

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

3. Shri Prateek Singh, 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 Adjudicating Officer has no jurisdiction to entertain and adjudicate upon the complaint filed by the

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

4. Shri Anuj Dewan, learned counsel for the respondent/promoter 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. Appellant/allottee has filed the complaint for refund of the amount deposited by him with the respondent/promoter on the ground that the respondent/promoter has failed to honour the terms and conditions of the 'Builder Buyer's Agreement' dated 17.02.20214.

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*

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*‘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

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interest. So, the impugned order dated 31.08.2021 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 31.08.2021 is hereby set aside. The complaint is remitted to the Haryana Real Estate Regulatory Authority, Gurugram, for decision afresh in accordance with law after affording opportunity of hearing to the parties. 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 18.05.2023.

11. Copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority for compliance.

12. File be consigned to the record.

Announced:  
May 03, 2023

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal

Inderjeet Mehta  
Member (Judicial)

Anil Kumar Gupta  
Member (Technical)