

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.843 of 2022

Date of Decision: 03.11.2023

Revital Reality Private Limited 1114, 11th Floor, Hemkunt
Chambers, 89, Nehru Place New Delhi-110019.

Appellant

Versus

Sumit Kumar Tiwari, Plot No.248, Ground Floor, Rajeev
Colony, NH8, Gurugram-110018.

Respondent

CORAM:

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

Argued by: Ms. Nainka, Advocate
 for the appellant.

 Mr. Jagdeep Kumar, Advocate,
 for the respondent.

ORDER:

RAJAN GUPTA, CHAIRMAN:

The present appeal has been preferred against the order dated 15.07.2021 passed by the Adjudicating Officer, Haryana Real Estate Regulatory Authority, Gurugram, whereby Complaint No.1352 of 2021, filed by respondent/allottee for refund of the amount was allowed. The operative part of the impugned order is reproduced as under:-

Appeal No.843 of 2022

“16. Learned counsel of complainant asserted again and again that his client simply wants to withdraw from the project and does not insist on contentions of default of respondent. In view of provisions of said policy as reproduced above, the colonizer is bound to refund the amount when buyer opts to withdraw from the project, without any condition subject to some deductions as mentioned above. I allow complaint in hands. Respondent/colonizer is directed to refund the amount already paid by the complainant, after deducting forfeitable amount as per said policy, within 90 days from today, failing which same will be liable to pay interest @ 9.30% p.a., till realization of amount.”

2. After passing the above said order, the respondent/allottee filed execution petition bearing Complaint No.E/1885/2022/1352/2021, before the Adjudicating Officer. The appellant/promoter filed objections but the same were dismissed vide order dated 25.08.2022, which reads as under:-

“Heard on an objection filed by the respondent/JD against decree under execution. It is submitted by learned counsel for Objector/JD that order under execution was passed by Adjudicating Officer, who had no jurisdiction to decide matters of refund. It was Haryana Real Estate Regulatory Authority, Gurugram, which was empowered to decide cases of refund. A decree passed without

Appeal No.843 of 2022

jurisdiction is nullity and this issue can be raised at any stage, even during execution.

*Learned counsel for Objector/JD explained that Haryana Real Estate Appellate Tribunal, Chandigarh (in brief Appellate Tribunal) while deciding a case titled as **Sameer Mahawar Vs. MG Housing Pvt. Ltd.** concluded that the learned Authority had no jurisdiction to adjudicate upon the issue regarding refund. Same directed that the complaints filed by the allottees seeking refund should be transferred to the Court of Adjudicating Officer. All such cases were thus transferred to the Adjudicating Officer for disposal but the State of Haryana notified Haryana Real Estate (Regulation and Development) Amendment Rules, 2019 on 12.09.2019. Through Rules 28 & 29, the learned Authority was given the jurisdiction to entertain and adjudicate complaints seeking relief of refund. Validity of these rules was confirmed by the High Court of Punjab and Haryana at Chandigarh in case titled as *Experion Developers Pvt. Ltd. Vs. State of Haryana & Ors.* In this way, as per learned counsel only the Authority was empowered to try and entertain cases for refund and not the Adjudicating Officer.*

*As per learned counsel for decree holder, this forum was fully competent to decide the cases of refund after findings giving by the Appellate Tribunal in case referred above. Order passed by our own High Court in *Experion Developer's case (Supra)* was stayed by the Apex Court and directions were given*

Appeal No.843 of 2022

by Appellate Tribunal in Sameer Mahawar case were still binding.

There is no quarrel on the issue that plea of nullity of an order can be taken at any stage, even during execution proceedings.

It is not denied that order passed by our own High Court was stayed by Apex Court, though matter has been finally decided now. As discussed earlier, before findings given by Hon'ble High Court in Experion Developer's case (supra), cases of refund were used to be dealt by Adjudicating Officer and order of High Court was stayed by the Apex Court. During this period of stay till matter is decided by Apex Court i.e. Newtech Promoters & Developers Pvt. Ltd. Vs. State of U.P. Etc. in Civil Appeals No.6745-6749 of 2021, all such cases of refund were decided by Adjudicating Officer. Order under execution was also passed during this period. In this way, I find weight in the plea of learned counsel for decree holder stating that this forum i.e. Adjudicating Officer was fully competent to try and entertain the case, in which order under execution was passed.

I find no merit in objections raised by counsel for JD, about jurisdiction of this forum.

Objections are thus dismissed.

Let directors of JD be called in person before this forum for their oral examination about asserts/properties of JD including details of bank accounts worth attachment.

Appeal No.843 of 2022

To come on 18.10.2022 for further proceedings.”

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

4. The delay in filing and re-filing of the appeal is condoned for the reasons stated in the applications.

5. Ms. Nainka, 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 respondent/allottee for refund of the amount paid by him to the appellant/promoter.

6. Shri Jagdeep Kumar, 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).

7. We have duly considered the aforesaid contentions.

8. Respondent/allottee has filed the complaint for refund of the amount deposited by him with the appellant/promoter on the ground that the

Appeal No.843 of 2022

appellant/promoter has failed to honour the terms and conditions of the agreement.

9. 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

Appeal No.843 of 2022

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.”

10. 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 15.07.2021 passed by the learned Adjudicating Officer is beyond jurisdiction, null and void and is liable to be set aside.

11. Consequently, the present appeal is hereby allowed. The impugned order dated 15.07.2021 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.

12. Parties are directed to appear before the learned Authority on 21.11.2023.

Appeal No.843 of 2022

13. The amount of Rs.3,77,855/- deposited by the appellant/promoter with this Tribunal in view of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016, along with interest accrued thereon, be sent to the Haryana Real Estate Regulatory Authority, Gurugram, for disbursement to the appellant/promoter as per the above said observations subject to tax liability, as per law and rules.

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

15. File be consigned to the record.

Announced:
November 03, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)