

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.686 of 2023

Date of Decision: 22.01.2025

Kumar Manglam Dalmia, resident of House No.2/84, Vijay Khand-2, Gomti Nagar, Lucknow, Uttar Pradesh-226010.

Appellant-allottee

Versus

Chintels India Pvt. Ltd., registered office at A-11, Kailash Colony, New Delhi-110048.

Respondent-promoter

CORAM:

**Justice Rajan Gupta
Shri Rakesh Manocha**

**Chairman
Member (Technical)**

Present: Mr. Arun Sharma, Advocate,
for the appellant.

Mr. Shubham Dayma, Advocate,
for the respondent.

O R D E R:

RAJAN GUPTA, CHAIRMAN (ORAL):

Present appeal is directed against order dated 25.07.2023 passed by the Authority¹ at Gurugram.

Operative part thereof reads as under:-

“38. The RERA act, 2016 empowers Adjudicating officer to summon any person, in order to establish the veracity and extent of default and it is evident that the inquiry has to take into its ambit and relate not only to their defaults of the promoter as detailed in section 12, 14, 18 of the Act but also

¹ Haryana Real Estate Regulatory Authority, Gurugram

the factors detailed in section 72 (a)(b)(c) (d), while assessing the quantum of compensation. The grievance of the allottee regarding defaults or deficiencies of the promoter detailed in the complaint would in itself cast a duty upon the Adjudicating officer to hold an enquiry to ascertain the veracity of the allegations made by the allottee against the promoter.

39. In addition, discretion has been bestowed by the legislature upon the m Adjudicating Officer to take into consideration any such factors as may be necessary to the case in furtherance of cause of justice. Therefore keeping in view the above mentioned observation read with the direction as was held in M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors., civil appeal nos. 6745-6749 of 2021 that present complainant is entitled to claim compensation under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. As adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

F.II Direct the respondent to refrain from giving effect to the unfair clauses unilaterally incorporated in the flat buyer agreement.

40. After dealing with relief No. 1, the aforesaid relief sought by the complainants-allottees became redundant. Hence, no direction to this effect.

41. *Complaint stands disposed of.*

42. *File be consigned to registry.”*

2. It appears that the appellant-allottee (Kumar Manglam Dalmia) applied for allotment of a unit in the project, namely, “Chintal Paradiso” at Sector 109, Gurugram, Haryana. A unit admeasuring 2050 sq. ft. was allotted to him by the respondent-promoter (Chintels India Pvt. Ltd) against total sale consideration of Rs.1,00,38,750/-. Appellant-allottee claims to have remitted an amount of Rs.1,01,32,854/-. OC² was granted on 18.08.2016 and offer of possession was made on 22.01.2017. From the record, it is revealed that building developed certain structural defects. On 10.02.2022, roof slabs of Tower-D collapsed and two women were killed in the said accident. Thereafter, cracks in the roofs were noticed. The DTP³ declared Towers E, F, G and H of the project as unfit for living. Admittedly, thereafter, the demolition work was carried out.

3. The complainant affected by the situation, preferred a complaint before the Authority at Gurugram claiming refund of the amount remitted by him. This complaint was, however, dismissed by the Authority on the ground that it was beyond its purview to refund the amount as the entire project have been collapsed. It, however, gave liberty to the complainant to seek

² Occupation Certificate

³ District Town Planner

compensation under the relevant provision of law by preferring a complaint before the AO⁴.

4. Admittedly, thereafter, the appellant-allottee preferred a complaint claiming compensation/refund before the AO, which is pending adjudication.

5. This Bench finds no legal infirmity with the observations made by the Authority. No such provision has been pointed out whereby refund can be granted when the entire project has collapsed.

6. Appeal is, thus, hereby dismissed.

7. It is, however, expected that the AO will expedite the proceedings and endeavour to conclude the same at the earliest.

8. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(joined through VC)

22.01.2025
Manoj Rana

⁴ Adjudicating Officer, Haryana Real Estate Regulatory Authority, Gurugram