

Shivani Dewan  
Vs.  
M/s SS Group Pvt. Ltd.  
Appeal No.75 of 2021

Present: Ms. Navneet Kaur, Advocate, Ld. counsel for the appellant.

Sh. Aashish Chopra, Ld. Senior Counsel with Ms. Sugandha Kundu, Advocate, Ld. counsel for the respondent.

*{The Court proceedings conducted through VC mode}*

The present appeal has been preferred against the order dated 10.02.2020 passed by the Ld. Adjudicating Officer, Haryana Real Estate Regulatory Authority, Gurugram, whereby the complaint filed by the appellant for refund was disposed of with the following directions:-

“12. x x x x x

- (i) *the respondent is directed to refund the amount deposited by the complainant after deducting 10% of the total sale consideration;*
- (ii) *the respondent would be at liberty to charge service tax and other taxes received from the complainant and deposited with the concerned authorities;*
- (iii) *the order passed in this regard should be complied with within a period of 90 days from this order.”*

2. The Hon'ble Apex Court in the case of **M/s Newtech Promoters and Developers Pvt. Ltd. v. State of UP & others** **2021 SCC Online SC 1044** has laid down 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 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."*

3. In view of the aforesaid ratio of law laid down by the Hon'ble Apex Court, it is only the Authority, which can deal with the complaint for grant of refund. Thus, the impugned order passed by the Ld. Adjudicating Officer is without jurisdiction.

4. Consequently, the present appeal is hereby allowed and the impugned order dated 10.02.2022 is hereby set aside. The appellant/allottee is at liberty to file fresh complaint for

refund before the Ld. Authority, which shall be disposed of in accordance with law.

5. Copy of this order be conveyed to parties/Ld. counsel for both the parties, Ld. Adjudicating Officer, Gurugram and Ld. Haryana Real Estate Regulatory Authority, Gurugram.

6. File be consigned to the records.

Justice Darshan Singh (Retd.)  
Chairman,  
Haryana Real Estate Appellate Tribunal,  
Chandigarh

Inderjeet Mehta  
Member (Judicial)

Anil Kumar Gupta  
Member (Technical)

16.03.2022  
*Gaurav*