

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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**Appeal No. 530 of 2021  
Date of Decision: 14.03.2022**

M/s Assotech Moonshine Urban Developers Private Limited,  
105 Pankaj Tower, Mayur Vihar, Phase-I, Delhi-110091.

Appellant

Versus

Digvijay Singh Rathore, H.No.23, First Floor, Block C, Vipul  
World, Sector 48, Gurgaon, Haryana-122001.

Respondent

**CORAM:**

Justice Darshan Singh (Retd),  
Shri Inderjeet Mehta,  
Shri Anil Kumar Gupta,

Chairman  
Member (Judicial)  
Member (Technical)

Present: Shri Arjun Kundra, Advocate, learned counsel  
for appellant.

Shri Deepanhu Panwar, Advocate, learned  
counsel for respondent.

[Hearing conducted through V.C.]

**ORDER:**

**JUSTICE DARSHAN SINGH (RETD.) CHAIRMAN:**

The present appeal has been preferred against the  
order dated 26.08.2021 passed by learned Adjudicating  
Officer, Haryana Real Estate Regulatory Authority, Gurugram,  
vide which the application moved by the appellant-promoter

for recalling the order dated 03.03.2020 initiating the ex parte proceedings against the appellant-promoter, was dismissed.

2. Heard. The perusal of the record shows that the impugned order has been passed by the learned Adjudicating Officer. As per the law settled by the Hon'ble Apex Court in the recent judgment titled as ***M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. 2022(1) R.C.R. (Civil) 357***, the complaint for refund is to be dealt with by the learned Authority and not by the Adjudicating Officer. Learned counsel for the respondent has very fairly stated that now the proceedings have been transferred to the learned Authority.

3. The impugned order shows that the notice was sent to the appellant-promoter through speed-post and was served on 03.01.2020 (wrongly mentioned as 03.01.2021), and the notice was also sent to the appellant-promoter through email dated 30.12.2019. The facts mentioned in the impugned order shows that the notice was sent by the learned Adjudicating Officer to the appellant-promoter only once, but, learned counsel for the respondent has pointed out that earlier the complaint was pending with the learned Authority and the

Authority had also issued notices to the appellant-promoter and even the copy of the complaint was supplied.

4. It is an admitted fact that the complaint is still pending before the learned Authority and has not been finally decided so far. The rights of the parties should be decided on merits than on technicalities. The appellant-promoter wants to associate in the proceedings to contest the complaint. The appellant should not be deprived of the rights to defend the complaint due to some initial default on its part. For the inconvenience caused to the respondent-allottee and the delay likely to be caused in the disposal of the complaint, the respondent-allottee can be well compensated with costs.

5. Thus, keeping in view our aforesaid discussion, in order to afford fair opportunity of being heard to the appellant and to enable it to defend the complaint, the present appeal is hereby allowed. The ex parte proceedings against the appellant-promoter are ordered to be set aside on payment of Rs.20,000/- as costs. The costs to the respondent-allottee shall be paid before the learned Authority. The appellant-promoter will file reply to the complaint within three weeks from the date of this order with the learned Authority with advance copy to learned counsel for the respondent-allottee.

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

7. File be consigned to the record.

Announced:  
March 14, 2022

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

Inderjeet Mehta  
Member (Judicial)

Anil Kumar Gupta  
Member (Technical)

CL

Judgment-Haryana Real Estate Appellate Tribunal