

Parveen Sharma  
Vs.  
M/s Spelondor Landbase Ltd.  
Appeal No.426 of 2021

Present: Dr. Anand Kumar Bishnoi, Advocate, Ld. counsel for the appellant.

Sh. Ravi Aggarwal, Advocate, Ld. counsel for the respondent.

*{The Court proceedings conducted through VC mode}*

The present appeal has been preferred against the order dated 19.03.2021 passed by the Ld. Adjudicating Officer, Haryana Real Estate Regulatory Authority, Gurugram.

2. The appellant-allottee has filed the complaint for refund of the amount deposited by him with the respondent-promoter on account of delay in delivery of possession.

3. In view of the latest judgment of the Hon'ble Apex Court in the case of **M/s Newtech Promoters and Developers Pvt. Ltd. v. State of UP & others 2022(1) R.C.R. (Civil) 357**, the Ld. Adjudicating Officer has no jurisdiction to deal with the complaint for refund. The Hon'ble Apex Court in the aforesaid case 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*

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*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.”*

4. In view of the aforesaid authoritative pronouncement of the Hon'ble Apex Court, where the matter is with respect to the refund of the amount and interest thereon, it is only the Ld. Authority, which has power to examine and determine the outcome of the complaint. Thus, in view of the ratio of law laid down by the Hon'ble Apex Court in the aforesaid judgment, the impugned order passed by the Ld. Adjudicating Officer is without jurisdiction.

5. Consequently, the present appeal is hereby allowed and the impugned order dated 19.03.2021 is hereby set aside. The case is remitted to the Ld. Authority for disposal in accordance with law.

6. Parties are directed to appear before the Ld. Authority on 25.04.2022.

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7. 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.
8. 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)

28.03.2022  
*Gaurav*