

Emaar India Ltd. Vs. Sunita and another  
CM No.18 of 2022  
IN Appeal No.112 of 2021

Present: Ms. Tanika Goyal, Advocate,  
Ld. counsel for the appellant.

Shri Arun Sharma, Advocate,  
Ld. counsel for the respondents.

The appellant-promoter has filed the application under Section 53(e) read with Section 54 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as, 'the Act') read with Section 151 of Code of Civil Procedure, 1908 for recall/review of Order dated 21<sup>st</sup> February, 2022 passed by this Tribunal.

2. We had disposed of the present appeal vide order dated 21<sup>st</sup> February, 2022 holding that the Ld. Authority has jurisdiction to deal with the complaint, wherein the claim is sought for refund of the amount. This view was taken by relying upon the authoritative pronouncement of Hon'ble Apex Court in case ***M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. 2022 (1) R.C.R. (Civil) 357.***

3. Ld. counsel for the appellant has pointed out that the issue involved in the present appeal was that the respondents-allottees have filed the execution petition before the Ld. Authority seeking refund of the amount. In fact the respondent was given only the liberty by the Ld. Authority to approach the Ld. Authority to seek the refund as provided under the Act, if the appellant failed to deliver the possession of the unit by 31<sup>st</sup> December, 2018. She contended that so far there is no order of refund but still the Ld. Authority without

considering the objections of the appellant has passed the order attaching the properties of the appellant-promoter vide impugned order dated 02<sup>nd</sup> March, 2021.

4. We have perused the reply filed by the appellant-promoter to the execution petition wherein certain objections have been taken. So it is yet to be decided by the Ld. Authority as to whether any amount is required to be refunded in execution of the order dated 16<sup>th</sup> October, 2018 passed in complaint No.8 of 2018. There also appears to be some contradiction in paras No.39(i) and 39(ii) of the decision and directions of the authority. These issues are yet to be resolved by the Ld. Authority before proceedings further with the execution petition.

5. So by exercising powers vested with this Tribunal under Section 53(e) of the Act the order dated 21<sup>st</sup> February, 2022 is hereby recalled.

6. The present appeal stands disposed of with a direction to the Ld. Authority to first adjudicate the issue as to whether the execution petition filed by the respondents-allottees for refund of whole of the amount along with interest shall be maintainable or not in pursuance of the order dated 16<sup>th</sup> October, 2018 passed in complaint No.18 of 2018. Till the decision of this issue the attachment of the properties of the appellant shall remain in abeyance.

7. Disposed of accordingly.
8. Copy of this order be sent to the concerned parties for information and compliance.
9. File be consigned to the record.

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

Inderjeet Mehta  
Member (Judicial)

Anil Kumar Gupta  
Member (Technical)

08.04.2022  
Manoj Rana