

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.562 of 2021
Date of Decision: 25.04.2022**

Elan Buildcon Private Limited, L-1/1100, First Floor, Street No.25, Sangam Vihar, New Delhi-110062.

Also at 3rd Floor, Golf View Corporate Tower, Golf Course Road, Sector 42, Gurugram-122002.

Appellant

Versus

1. Sumit Dogra, Flat No.120, Sector 17, Pocket-D, Keshav Kunj Apartment, Dwarka, New Delhi-110078.
2. Shaivali Sharma, A-103, PNB Apartment, Plot No.11, Sector 4, Dwarka, New Delhi-110078.

Respondents

CORAM:

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

Chairman
Member (Judicial)
Member (Technical)

Present: Shri Aashish Chopra, learned Senior Advocate, (on telephone) with Ms. Suganda Kundu, Advocate, learned counsel for the appellant.

Shri Akshat Mittal, Advocate, for Shri Rajan Kumar Hans, Advocate, learned counsel for the respondents.

ORDER:

JUSTICE DARSHAN SINGH (RETD.) CHAIRMAN:

The present appeal has been preferred against the order dated 20.08.2021 passed by the learned Adjudicating

Officer, Haryana Real Estate Regulatory Authority, Gurugram, whereby the complaint filed by the respondents-allottees for refund of the entire amount paid by them to the appellant-promoter along with interest at the prescribed rate has been allowed and the appellant-promoter has been directed to refund the amount paid by the respondents-allottees along with interest @ 9.30% p.a. within 90 days from the date of the impugned order. The appellant was also burdened with costs of Rs.1,00,000/-.

2. The complaint filed by the respondents-allottees was un-successfully contested by the appellant-promoter by filing the detailed reply.

3. At the very outset, it is pertinent to mention that the appellant-promoter has deposited a sum of Rs.16,17,172/- vide Demand Draft dated 30.10.2021 in order to comply with the provisions of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (for short 'the Act').

4. We have heard learned counsel for the parties.

5. Initiating the arguments, learned counsel for the appellant contended that the impugned order is without jurisdiction as the Adjudicating Officer had no competency to deal with and adjudicate upon the complaint with respect to refund of the amount. To support his contentions, he relied

upon case ***M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. 2022(1) R.C.R. (Civil) 357.***

Thus, he contended that the impugned order cannot be sustained in the eyes of law.

6. On the other hand, learned counsel for the respondents-allottees contended that in case the case is remitted to the Authority, the Authority should be directed to dispose of the complaint within two months as the amount of the respondents-allottees is being withheld by the appellant-promoter.

7. He further contended that the amount deposited by the appellant-promoter with this Tribunal to comply with the provisions of Section 43(5) of the Act should not be refunded; rather, the same should be remitted to the learned Authority so that the order ought to be passed in favour of the respondents-allottees may be satisfied.

8. We have duly considered the aforesaid contentions.

9. It is an admitted fact that the respondents-allottees had filed the complaint for refund of the entire amount deposited by them before the learned Adjudicating Officer, Haryana Real Estate Regulatory Authority, Gurugram. The said complaint was entertained by the learned Adjudicating Officer and the impugned order for refund has been passed.

10. The Hon'ble Apex Court in case ***M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc.*** (Supra) 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.”

11. In the aforesaid case, the Hon’ble Apex Court has authoritatively laid down that where the complaint is for 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 the complaint. It has been further laid down that 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.

12. Thus, in view of the aforesaid pronouncement of the Hon’ble Apex Court, the learned Adjudicating Officer was not competent to entertain, adjudicate upon and grant the relief of refund along with interest. It was only the regulatory authority which had jurisdiction to deal with the complaint filed by the respondents. So, the impugned order is perfectly without jurisdiction and is not sustainable in the eyes of law.

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13. The plea raised by learned counsel for the respondents that the amount of pre-deposit made by the appellant-promoter should be remitted to the learned Authority, has no substance. Once the impugned order is held to be without jurisdiction and appeal filed by the appellant-promoter is going to be allowed, the amount of pre-deposit has to be returned/refunded to the appellant-promoter. The promoter is required to make the mandatory pre-deposit only to get its appeal entertained. It cannot be deprived its amount during the fresh trial of the complaint. The disbursement of the amount of pre-deposit will follow the decision of the appeal.

14. It is always expected that the learned Authority will expeditiously dispose of the complaint filed before it to satisfy the spirit of the Act as provided under Section 29 sub-section 4 of the Act, and to protect the interest of home-buyers.

15. Keeping in view our aforesaid discussion, the present appeal is hereby allowed. The impugned order dated 20.08.2021 is hereby set aside. The case is remitted for fresh trial in accordance with law to the learned Haryana Real Estate Regulatory Authority, Gurugram.

16. The parties are directed to appear before the learned Authority on 25.05.2022.

17. The amount deposited by the appellant-promoter i.e. Rs.16,17,172/- with this Tribunal to comply with the provisions of Section 43(5) of the Act be returned/refunded to the appellant along with interest accrued thereon, in accordance with law/rules and of course subject to tax liability, if any.

18. The copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority for compliance.

19. File be consigned to the record.

Announced:
April 25, 2022

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)