

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.402 of 2020
Date of Decision: 02.05.2022**

Rameshwar s/o Shri Mani Ram, Resident of Village Allaudinpur, Village & Post Office Budhera, Tehsil Loharu, District Bhiwani-127201.

Appellant

Versus

M/s Ocus Skyscrapers Reality Ltd. C-94, First Floor, Shivalik, New Delhi-110017.

Respondent

CORAM:

Justice Darshan Singh (Retd),	Chairman
Shri Inderjeet Mehta,	Member (Judicial)
Shri Anil Kumar Gupta,	Member (Technical)

Present: Shri Rajesh Guran, Advocate for Shri Pradeep Singh Sheoran, Advocate learned counsel for the appellant.

Shri Lokesh Bhola, Advovate, learned counsel for the respondent.

ORDER:

JUSTICE DARSHAN SINGH (RETD.) CHAIRMAN:

The present appeal has been preferred against the order dated 16.10.2019 passed by the learned Adjudicating Officer, Haryana Real Estate Regulatory Authority, Gurugram, in Complaint No.3126 of 2019 filed by the appellant-allottee.

2. In the complaint, the appellant-allottee has sought refund of the entire amount deposited by him along with interest. The said complaint was entertained, dealt with and

adjudicated upon by the learned Adjudicating Officer and was disposed of with the following directions:-

- “8. So, taking into consideration of factual position detailed above, it is evident that the respondent/developer did not violate the terms and conditions of BBA and there is nothing to show in any way that the respondent had not offered the possession of the allotted unit to the complainant. So, findings of issue No.I & II are hereby ordered to be returned against the complainant.
9. As far as issue no.III is concerned, in view of discussions above, it is proved that the complainant is only interested for the refund of amount deposited with the respondent and the complainant filed by him in this regard is devoid of merit. However, since the complainant failed to pay the remaining amount of the allotted unit to the respondent despite issuance of remainders mentioned in annexure II, o, he is liable to pay the amount due to the respondent besides interest @ 10.35% p.a. from the date the same became due till the date of actual payment. A period of three months is given to him to pay that amount due to the respondent besides interest. He is also directed to take possession of the allotted unit within that period failing which the respondent shall be entitled to proceed against him as per the terms and conditions contained in BBA.

10. *Thus, in view of my discussion above, the complaint filed by the complainant is ordered to be disposed of as per directions mentioned above.”*

3. Learned proxy counsel for the appellant contended that the impugned order passed by the learned Adjudicating Officer is without jurisdiction in view of law laid down by the 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.***

4. Learned counsel for the respondent could not dispute the legal position laid down by the Hon’ble Apex Court in the aforesaid case ***M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc.*** (Supra).

5. It is an admitted fact that in the complaint as well as in the grounds of appeal, the appellant-allottee is seeking refund of the entire amount deposited by him with the respondent-promoter along with interest. 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

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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."

6. In view of the aforesaid ratio of law laid down by the Hon'ble Apex Court, it was only the regulatory authority which was competent to entertain and decide the complaint filed by the appellant-allottee for refund of the amount along with

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interest. So, the impugned order passed by the learned Adjudicating Officer is without jurisdiction.

7. Consequently, the present appeal is hereby allowed. The impugned order dated 16.10.2019 passed by the learned Adjudicating Officer is hereby set aside. The case is remitted to the learned Haryana Real Estate Regulatory Authority, Gurugram for fresh decision of the complaint in accordance with law.

8. The parties are directed to appear before the learned Authority on 26.05.2022.

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

10. File be consigned to the record.

Announced:
May 02, 2022

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)