

Dhiraj Chawla & Anr.
Vs.
Godrej Premium Builders Pvt. Ltd. @Godrej Properties Ltd. & Anr.
Appeal No.512 of 2021

Present: Sh. Rahul Srivastava, Advocate, Ld. counsel for the appellant.

Sh. Saurabh Khosla, Ld. proxy counsel for Sh. Brajesh Tripathi, Advocate, Ld. counsel for the respondent.

The present appeal has been preferred against the order dated 20.07.2021 passed by the Ld. Adjudicating Officer, Haryana Real Estate Regulatory Authority, Gurugram, whereby the complaint filed by the appellants was dismissed with the following observations:-

“15. After considering above discussed facts, it is not proved that the respondents were at fault in not delivering the possession in time or did not provide any information about progress/development in the construction of project/unit in question or misrepresented any facts. In the same way, the complainants failed to prove as what promise/advice was given to them due to which same opted to cancel their unit and asked for refund. If the complainants by their sweet will opted to withdraw from the project, then the respondents are entitled to deduct/forfeit the amount as per Agreement. No case is made out for direction to the respondents to refund the entire amount as claimed by the complainants, what to say of interest, as sought by them in this case.

16. Complaint in hands is thus dismissed.”

It is an admitted fact that in the complaint as well as the grounds of appeal filed with this Tribunal, the appellants-allottees are seeking refund of the entire amount of Rs.28,44,703/- along with interest. The said complaint has been entertained and adjudicated upon by the Ld. Adjudicating Officer, Gurugram and the impugned order was also passed by him.

The Hon'ble Apex Court in **M/s Newtech Promoters and Developers Pvt. Ltd. v. State of UP & others 2022 (1) R.C.R. (Civil) 357**, 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.”

As per the aforesaid authoritative pronouncement of the Hon'ble Apex Court, it is only the Authority, which can deal with the complaint for grant of refund. So, the impugned order passed by the Ld. Adjudicating Officer, Gurugram is without jurisdiction.

Consequently, the present appeal is hereby allowed and the impugned order dated 20.07.2021 is hereby set aside. The case is remitted to the Ld. Haryana Real Estate Regulatory Authority, Gurugram (in short ‘the Ld. Authority’) for fresh trial in accordance with law.

Parties are directed to appear before the Ld. Authority on
01.06.2022.

Copy of this order be communicated to parties/Ld. counsel
for the parties, Ld. Adjudicating Officer and Ld. Haryana Real Estate
Regulatory Authority, Gurugram.

File be consigned to the records.

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

Anil Kumar Gupta
Member (Technical)

26.04.2022
GVT