

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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**Appeal No.230 of 2021  
Date of Decision: 19.05.2022**

M/s Tata Housing Development Company Limited, Regional Office at: Intellion Edge, Tower A, First Floor, Southern Peripheral Road, Sector-72, Gurugram-122101.

2<sup>nd</sup> Address:

“E” Block, Voltas Compound, T.B. Kadam Marg, Chinchpokli, Mumbai-400033.

Appellant

Versus

Ms. Sukriti Gupta, Resident of House No.D-29, Top Floor, Saket, New Delhi-110017.

Respondent

**CORAM:**

Justice Darshan Singh (Retd),  
Shri Inderjeet Mehta,

Chairman  
Member (Judicial)

**Present:** Ms. Rupali Shekhar, Advocate, learned counsel for the appellant.

Shri Satyender Chahar, Advocate, learned counsel for the respondent (Joined the proceedings through telephone).

**ORDER:**

**JUSTICE DARSHAN SINGH (RETD.) CHAIRMAN:**

The present appeal has been preferred against the order dated 02.02.2021 passed by the learned Adjudicating Officer, Haryana Real Estate Regulatory Authority, Gurugram, whereby Complaint No.6250 of 2019, filed by the respondent-

allottee for refund of the amount was allowed with the following directions:-

- “i) To refund the entire amount of Rs.2,16,29,198/- besides interest at the prescribed rate i.e. 9.3% p.a. from the date of each payment till the date on which the full refund along with compensation in the form of interest in terms of this order is paid to the complainant.
- ii) The respondent shall also pay a sum of Rs.1,00,000/- inclusive of litigation charges as compensation to the complainant.”

2. We have heard learned counsel for the parties.
3. Learned counsel for the appellant has contended that in view of the law laid down by the Hon’ble Apex Court in case **Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. 2022(1) R.C.R. (Civil) 357**, the learned Adjudicating Officer has no jurisdiction to entertain and adjudicate upon the complaint filed by the respondent-allottee for refund of the amount paid by her to the appellant-promoter.
4. Learned counsel for the respondent could not repel the contentions raised by learned counsel for the appellant in view of the authoritative pronouncement of the Hon’ble Apex Court in **Newtech Promoters’** case (Supra).
5. We have duly considered the aforesaid contentions.

6. The respondent-allottee has filed the complaint for refund of the amount deposited by her with the appellant-promoter as the appellant has failed to honour the terms and conditions of the 'Apartment Buyer's Agreement' dated 20.01.2017.

7. The legal position has been settled by the Hon'ble Apex Court in **Newtech Promoters'** case (Supra) with respect to the jurisdiction of the Adjudicating Officer vis-à-vis the Authority 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.”*

8. As per the aforesaid ratio of law, it is the learned Authority which can deal with and determine the outcome of the complaint where the claim 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. So, the impugned order dated 02.02.2021 passed by the learned Adjudicating Officer is beyond jurisdiction, null and void and is liable to be set aside.

9. Consequently, the present appeal is hereby allowed. The impugned order dated 02.02.2021 is hereby set aside. The complaint is remitted to the learned Haryana Real Estate Regulatory Authority, Gurugram, for fresh trial/decision in accordance with law.

10. Parties are directed to appear before the learned Authority on 04.07.2022.

11. The amount deposited by the appellant-promoter i.e. Rs.3,82,10,606/- with this Tribunal to comply with the provisions of Section 43(5) of the Real Estate (Regulation and Development) Act, 2016, along with interest accrued thereon, be sent to the learned Authority for disbursement to the appellant-promoter subject to tax liability, if any, as per law and rules.

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

13. File be consigned to the record.

Announced:  
May 19, 2022

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

Inderjeet Mehta  
Member (Judicial)