

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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**Appeal No.305 of 2021**

**Date of Decision: 16.05.2022**

1. Anil Kumar Suri s/o late P.L. Suri
2. Seema Suri w/o Shri Anil Kumar Suri

L-6073, Devender Vihar, Sector-56, Gurugram.

Appellants

Versus

Jindal Realty Private Limited, Sonapat through its C.E.O.,  
Narela Road, Sector-35, Sonapat.

Corporate Office: M 648, 6<sup>th</sup> Floor, DLF Tower, Shivaji Marg  
(Najafgarh Road), Moti Nagar, New Delhi-110015.

Respondent

**CORAM:**

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

Chairman  
Member (Judicial)  
Member (Technical)

**Argued by:** Shri Anil Kumar Suri-appellant no.1 in person.

Shri Drupad Sangwan, Advocate, learned  
counsel for the respondent.

**ORDER:**

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

The present appeal has been preferred against the  
order dated 04.03.2021 passed by the learned Adjudicating

Officer, Haryana Real Estate Regulatory Authority, Panchkula whereby Complaint No. 1418 of 2019 filed by the appellants/allottees was disposed of with the following directions: -

*“27. In accordance with paragraph 23 and 26 the compensation payable by respondent to complainants comes to ₹6,35,534/-(6,81,347-45,813). Though the compensation to be paid to the complainants comes to ₹6,35,534/-, yet at this stage it is worthwhile to point out here that in the relief clause the complainants have sought compensation upto ₹ 5,00,000/- for mental pain, agony, harassment and loss of opportunity. The complainants cannot be said to be entitled to more than relief claimed. Hence, the compensation to be paid to the complainants under head of mental pain, agony, harassment and loss of opportunity is restricted to ₹ 5,00,000/-. The complainants are also awarded ₹20,000/- as litigation cost. Accordingly, respondent is directed to pay an amount of ₹5,20,000/- (5,00,000+20,000) (rupees five lakhs twenty thousand only). The amount shall be paid within 45 days of uploading of this order and remaining amount to be paid as second instalment within next 45 days.*

*28. In these terms, the present complaint stands disposed of. After uploading, file be consigned to record room.”*

2. As per averments in the complaint, the appellants-complainants had booked unit no.E-70 (Villa) in the project of the respondent-promoter namely 'Jindal Global City' Sector-35, Sonapat-Narela Road, Haryana, on 13.11.2010. The total sale consideration of the unit was Rs.87,37,483/-. A 'Buyer's Agreement' was executed between the parties on 14.02.2011. The possession of the unit was to be delivered to the appellants-complainants within 30 months plus 180 days grace period from the date of Buyer's Agreement dated 14.02.2011. Thus, the possession was to be delivered up to 14.02.2014. The appellants-complainants paid Rs.69,11,396/- to the respondent-promoter. However, the respondent failed to deliver possession of the unit to the appellants within the stipulated period. The possession was offered after delay of more than four years on 21.06.2018. Feeling aggrieved of the delay in delivery of possession, the appellants-complainants served the respondent with a legal notice dated 13.08.2018 and filed complaint claiming the relief as under: -

*"I) The complainants crave to get delay compensation/interest for delay caused in handing over the possession of unit & appreciation of amount invested when the project halted.*

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- II. *The complainants should further be returned interest amount paid by complainants on Rs.76,294/- which should be charged @ 9% only.*
- III. *Additional cost due to GST should be shared equally by respondent as per the order in case number 1048/2018 of this Hon'ble Authority and therefore 50% GST money may be refunded.*
- IV. *Respondent should also refund the amount of Rs.40K spent on procuring loan from LIC as per Legal Notice.*
- V. *Appropriate compensation/interest to complainants be also given on account of unilateral increase in area without their consent. Also travelling cost upto 20 k incurred on visits to respondent for resolution may kindly be reimbursed.*
- VI. *Amount collected as PLC may kindly be refunded as now the adjacent green cover is gone due to revision in plans.*
- VII. *Compensation up to Rs.5,00,000/- for harassment, mental pain & agony, loss of opportunity may also be awarded to complainant along with Rs.50,000/- as litigation costs.*
- VIII. *Any other relief, which this authority may deem fit in the present circumstances may also be awarded to the complainant."*

3. The respondent-promoter contested the complaint on the grounds, *inter alia*, that after completion of the development work in the area, construction of the Villa of the appellants-complainants was started in the month of September, 2015 and an intimation in this regard was sent to the appellants vide letter dated 20.06.2015. It was further pleaded that during the commencement of the construction, the respondent demanded various installments from the appellants i.e. on various stages of the construction the same were paid by them without any objection. Thereafter, on completion of the construction of the unit, the respondent applied for Occupation Certificate to the office of District Town Planner, Sonapat. The Occupation Certificate was received by the respondent on 11.06.2018. Thereafter possession was offered to the appellants on 21.06.2018 and demand of balance dues was also raised from the appellants. The appellants cleared all the outstanding dues and got executed and registered the Conveyance Deed on 18.10.2018.

4. It was further pleaded that the delay in delivery of possession was not deliberate, rather, it was due to amendments made by the Department of Town and Country Planning, Haryana in sectoral plan without informing the promoters. Being aggrieved, a representation was made

highlighting the fact that the delay in approval of demarcation and Zoning plan had already delayed the project and requested the DGTCP to withdraw the revised Sectoral plan and restore the old sectoral plan. Ultimately the final layout was sanctioned on 09.02.2015. The respondent had received approval of layout plan on 08.04.2010 and zoning on 21.09.2011 prior to arbitrary revision of sectoral plan. It was pleaded that the booked area was tentative in terms of clause 8(iii) and (iv) of the Buyer's Agreement dated 14.02.2011 and was subject to +25% variation. Thus, the delay even if any, was due to force majeure circumstances and reasons absolutely beyond reasonable control of the respondent.

5. It was further pleaded that the complaint pertaining to compensation and interest in respect of any matter/grievance covered under Sections 12, 14, 18 and 19 or any complaint for failure to comply/non-compliance with any of the provisions of Sections 12, 14, 18 and 19 of the Act is required to be filed only before the Adjudicating Officer under Rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter called 'the Rules') read with Section 31 and 71 of the Act and not before the learned Authority under Rule-28. With these pleadings the respondent-promoter prayed for dismissal of the complaint.

6. After hearing learned counsel for the parties and appreciating the material on record, the learned Adjudicating Officer disposed of the complaint by issuing directions reproduced in the upper part of this order, vide impugned order dated 04.03.2021.

7. Aggrieved with the aforesaid order of the learned Adjudicating Officer, the present appeal has been preferred by the appellants-complainants.

8. We have heard Shri Anil Kumar Suri-appellant no.1 in person, Shri Drupad Sangwan, Advocate, learned counsel for the respondent and have meticulously examined the record of the case. They have also filed the written arguments.

9. Before proceeding further, it is pertinent to mention that during the pendency of the complaint learned counsel for the appellants-complainants suffered statement to restrict the claim of the complainants and the learned Adjudicating Officer on the basis of statement made at bar by learned counsel for the appellants-complainants passed the order dated 06.11.2019 as under:-

*“1. Ld. Counsel for the complainant has today made a statement whereby he has restricted the present complaint only for claiming compensation*

*and has given up his claim for the relief of refund, without prejudice to his rights to file a separate complaint before the Haryana Real Estate Regulatory Authority. In view of such statement which has been duly recorded, the present complaint in respect of relief for refund is dismissed as withdrawn with liberty to the complainant to file separate complaint before Haryana Real Estate Regulatory Authority, Panchkula.*

3. *Case is adjourned to 21.01.2020.”*

10. Appellants contended that the learned Adjudicating Officer has mixed the reliefs of compensation by way of interest for delayed construction and unlawful holding of their money and compensation for harassment and mental agony. These are two different reliefs and cannot be clubbed together to reduce the total amount of compensation. These have to be adjudicated upon as two different issues which may result in two different reliefs. To support their contentions, they relied upon case ***M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. 2022(1) R.C.R. (Civil) 357.***

11. They further contended that the first relief is based on the fact that the appellants have deposited a large sum of money which the respondent had with it during the force majeure period. So, it was their legitimate expectation



to claim 9% interest on the holding of the said amount, but the learned Adjudicating Officer has wrongly calculated the interest @ 6% per annum.

12. It was further contended that the relief of compensation for mental agony and harassment is supposed to be adjudicated upon on higher ideals, which are not merely related to suffering an actual loss. They are pursuing their rightful claims with the respondent since August 13, 2018 when the legal notice was issued. They also made several visits to the office of the respondent even sent several emails to the respondent narrating their difficult position, but, till date they have not received even a single penny. They contended that word 'compensation' is of a very wide connotation. It may constitute actual loss or expected loss and may extend to compensation for physical, mental or even emotional suffering, insult or injury or loss. They relied upon case ***Lucknow Development Authority v. M.K. Gupta, 1994 SCC(1) 243.***

13. They further contended that the flat owners suffered mental agony and harassment, as a result of the default of the developer and are entitled for adequate compensation. To support their contentions, they relied

upon case **Wg. Cdr. Arifur Rahman Khan v. DLF Southern Homes Pvt. Ltd. 2020 SCC OnLine SC 667.**

14. Appellant further contended that they suffered loss of Rs.40,000/- as their original loan was forfeited which they had taken to pay for the house because the respondent took their instalments but did not tell them that there was force majeure on the property. They kept making payments and suffered the consequences of the force majeure for four years. They contended that to own the house is the single highest investment of an individual in his life time which sometimes more than 77% of the total assets of average Indian household. This fact has put the home buyers in a very vulnerable position being the weakest stakeholder with a high financial exposure. They further contended that they have also paid the GST on the project. As per the decision of the Haryana Real Estate Regulatory Authority, the burden of GST should be shared equally by the home buyers and the developer, but the learned Adjudicating Officer did not take into consideration this fact.

15. They further contended that the respondent-promoter has unlawfully kept their money during the force majeure period which was completely unfair. The

respondent has withheld their money for four years without revealing that there was no construction happening at the spot. The conduct of the respondent was completely unjustified. They further contended that the learned Adjudicating Officer was wrong in making the provisions for the interest which was already waived of by the respondent. The respondent has never raised the issue of interest and suddenly raised this issue before the learned Haryana Real Estate Regulatory Authority as an afterthought.

16. It was further contended that the confusion regarding jurisdiction of the learned Adjudicating Officer and the Authority was the interplay of Sameer Mahawar's case and the Amended Haryana Rules. Due to this reason, the counsel for the appellants made an inadvertent submission to the Adjudicating Officer for withdrawing the other reliefs except compensation. The burden of this confusion cannot be shifted to the appellants as they are innocent homebuyers and rightful claimants. Even if the Adjudicating Officer lacked jurisdiction subsequent to filing of their claim, that will not have no bearing on their claim. The appellants have relied upon Section 53 and 57 of the Act, which provide that the Appellate Tribunal has the powers to pass a decree and be guided by the principles of

natural justice. To support their contentions, they relied upon the cases:-

- (1) ***L.I.C. of India vs. Consumer Education & Research Centre, 1995 AIR 1811***
- (2) ***Mahabir Auto Stores v. India Oil Corporation AIR 1990 SC 1031***
- (3) ***M/s Erusian Equipment & Chemicals Ltd. V. State of West Bengal, 1975(1) SCC 70***

17. They contended that the principles of natural justice call for the protection of an innocent party against the wrongful party with high bargaining power, so the Tribunal must exercise its powers to remedy the wrong and pass a decree in favour of the appellants.

18. On the other hand, learned counsel for the respondent-promoter contended that the appellants are seeking relief for delayed possession and other reliefs mentioned in complaint under Section 18 of the Act, which could have been granted only by the Haryana Real Estate Regulatory Authority. He further contended that reliance of the appellants on ***M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc.*** (Supra) is misplaced and they have erred in understanding the judgment.

19. He further contended that the judgments relied upon by learned counsel for the appellant to claim that interest should have been awarded @ 9% per annum, has been rendered by the learned Authority under Section 18 of the Act and not by the Adjudicating Officer.

20. He further contended that the learned Adjudicating Officer has exclusive powers to grant compensation on the factors mentioned in Section 72 of the Act. It was further contended that the delay in completion of the project was not intentional but occurred due to force majeure circumstances which have been rightly noted in the impugned order. The contentions of the appellants regarding forfeiture of the loan amount, GST etc were not correctly dealt with by the learned Adjudicating Officer. Moreover, the Adjudicating Officer has no jurisdiction to deal with this issue.

21. He further contended that all the reliefs claimed in the complaint and being pressed in the present appeal, except compensation, were beyond the jurisdiction of the learned Adjudicating Officer. To support his contentions, he relied upon ***M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc.***(Supra). The learned Adjudicating Officer shall only have jurisdiction to adjudge the

compensation strictly in terms of factors enumerated in Section 72 of the Act. He contended that the appellants are not entitled for the other claims raised in the complaint and the present appeal as having been given up vide statement dated 06.11.2019 and beyond the jurisdiction of the learned Adjudicating Officer.

22. We have duly considered the aforesaid contentions.

23. As pointed out above, the appellants have claimed various claims reproduced in para no.2 of the judgment i.e. with respect to the delayed compensation/interest for the delay caused in handing over the possession of the unit, return of the interest amount paid by the appellants on Rs.76,294/- @ 9%, sharing of the additional cost of GST, refund of amount of Rs.40,000/- spent on procuring loan from the L.I.C., compensation/interest on account of unilateral increase in the area without their consent, refund of the amount collected as Preferential Location Charges (PLC) and compensation up to Rs.5,00,000/- for harassment, mental pain & agony, loss of opportunity along with Rs.50,000/- as litigation costs.

24. The aforesaid claims sought by the appellants touches the various aspects. 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.”

25. 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. It has been further categorically held that if there is 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. It was further made clear that if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the Adjudicating Officer, it 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. So, the Adjudicating Officer is only competent to adjudge the compensation and interest under Sections 12, 14, 18 and 19 of the Act. The Adjudicating Officer is not invested with any other power. All other functions i.e. with respect 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 or fulfillment of other obligations will fall within the purview of the jurisdiction of the Authority.

26. We have downloaded the copy of the order dated 06.11.2019 passed by the learned Adjudicating Officer in the present complaint which has been reproduced above in para no.9 of this order, which shows that learned counsel for the appellants/complainants made the statement before the learned Adjudicating Officer that he restricted the complaint only for claiming compensation and has given up his claim for the relief of refund, without prejudice to his rights to file a separate complaint before the Haryana Real Estate Regulatory Authority. It was further made clear in the aforesaid order that in view of the said statement, the complaint with respect to the relief of refund was dismissed as withdrawn with liberty to the appellants (complainants) to file separate complaint before the learned Haryana Real Estate Regulatory Authority, Panchkula. So, as per the aforesaid statement, the appellants have restricted their claim in the present complaint only to claim compensation, which was of course the right stand of learned counsel for the appellants which has been vindicated with the ratio 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.*** (Supra).

27. Thus, it cannot be agitated before this Tribunal that there was confusion in the mind of learned counsel for the appellants to suffer the said statement before the learned Adjudicating Officer.

28. There is no dispute that as per Section 53 of the Act, this Tribunal is to be guided by the principles of natural justice. Section 57 of the Act provides that every order made by this Tribunal under this Act shall be executable as a decree of the Civil Court. These provisions of law nowhere empower the Appellate Tribunal under the Act to travel beyond the complaint filed by the complainants under Section 31 of the Act. It is settled principle of law that appeal is the continuation of the suit. So, the Appellate Tribunal cannot change the stream of the complaint. In the appeal arising out of the order passed by the Adjudicating Officer, the Appellate Tribunal is to adjudicate upon the appeal within the sphere of the jurisdiction of the Adjudicating Officer and if the appeal is preferred against the order passed by the Authority under the Act, the Appellate Tribunal has to adjudicate upon the appeal keeping in view the jurisdictional competency of the Authority. So, the Tribunal cannot grant the reliefs which are within the domain of the Authority in an appeal arising out of the order passed by the Adjudicating Officer or vice versa. Thus, in the

present appeal, this Tribunal can only adjudicate upon the reliefs which were within the sphere of the jurisdiction of the Adjudicating Officer.

29. We do not find that the learned Adjudicating Officer has mixed the claim of compensation sought by the appellants. In para no.22 of the impugned order, the learned Adjudicating Officer has categorically mentioned that utilization of the amount can be termed as disproportionate gain to the respondent which has caused mental pain, agony and harassment to the complainants. Thus, it shows that the learned Adjudicating Officer has adjudged the compensation payable to the complainants only with respect to the mental pain, agony and harassment by taking note of the factors provided in Section 72 of the Act. The learned Adjudicating Officer had not dealt with the issue with respect to grant of interest for delay in delivery of possession.

30. Section 72 of the Act reads as under:-

***“72. Factors to be taken into account by the adjudicating officer-***

*While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely: —*

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*(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default:*

*(b) the amount of loss caused as a result of the default;*

*(c) the repetitive nature of the default;*

*(d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.*

31. The factors to be taken into consideration to adjudge the compensation by the Adjudicating Officer have been provided in Section 72 of the Act, reproduced above. The aforesaid factors have been provided by the legislature so that the compensation which is to be awarded to the aggrieved party appears to be just. It is to be kept in mind that the amount of compensation cannot be bonanza nor a source of profit. The compensation has to be rational and to be determined by adopting the judicious approach in accordance with the factors enumerated in Section 72 of the Act. It should not be the outcome of whims, wild guesses and arbitrariness.

32. In the instant case, the learned Adjudicating Officer has determined the amount of compensation by calculating the interest @ 6% on the amount which was paid by the

appellants before the period of force majeure. The method adopted by the learned Adjudicating Officer is transparent and satisfies the factors provided in Section 72 of the Act. The learned Adjudicating Officer has categorically mentioned that the respondent-promoter has utilized the amount paid by the appellants to its unfair advantage. The utilization of the said amount has been considered by the learned Adjudicating Officer to be disproportionate gain by the respondent-promoter. This disproportionate gain or unfair advantage has been acquired by the respondent-promoter as a result of its own default as the payments were received by the respondent knowing fully well that they were not in a position to start the construction, so the money paid by the appellants was not spent on the construction of the unit, the purpose for which it was paid. All these acts of the respondent-promoter have resulted in mental pain, agony and harassment to the appellants. Keeping in view the disproportionate gain or unfair advantage obtained by the respondent-promoter and the loss caused to the appellants as a result of default by the respondent-promoter, the compensation of Rs.5,00,000/- as awarded by the learned Adjudicating Officer for mental pain, agony and harassment to the appellants is perfectly just compensation.

33. It is clarified that the aforesaid amount of compensation awarded by the learned Adjudicating Officer is only with respect to the mental pain, agony, harassment and loss of opportunity to the appellants. In view of the statement dated 06.11.2019, the learned Adjudicating Officer has not touched or dealt with the other reliefs claimed in the complaint. The learned Adjudicating Officer has restricted the complaint only with respect to the compensation for mental pain, agony and harassment. So, the appellants shall be at liberty to avail the appropriate legal remedy before the learned Authority with respect to the other reliefs in accordance with law as the other reliefs sought in the complaint were totally beyond the jurisdiction of the learned Adjudicating Officer in view of the ratio of law laid down by the Hon'ble Apex Court in ***M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc.*** case (Supra).

34. Thus, keeping in view our aforesaid discussion, we do not find any legal infirmity in the impugned order passed by the learned Adjudicating Officer. Hence, the present appeal being without any merit is hereby dismissed. However, it is clarified that the appellants shall be at liberty to avail the appropriate legal remedy before the learned Authority with

respect to the other reliefs originally claimed in the complaint, in accordance with law.

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

36. File be consigned to the record.

Announced:  
May 16, 2022

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

Inderjeet Mehta  
Member (Judicial)

Anil Kumar Gupta  
Member (Technical)

CL