

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

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**CWP No.2055 of 2022 (O&M).
Date of Decision: 29.03.2022.**

Magic Eye Developers Pvt. Ltd.

....Petitioner.

Versus

Adjudicating Officer, Real Estate Regulatory Authority and others

....Respondents.

**CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Tarunvir Singh Khehar, Advocate and
Mr. Himanshu Arora, Advocate, for the petitioner.

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep K. Manchanda, Advocate
for the respondent (RERA).

Amol Rattan Singh, J. (Oral)

By this petition, filed under the provisions of Article 226 read with Article 227 of the Constitution of India, the petitioner is seeking issuance of a writ of certiorari quashing the order dated 20.08.2021 (Annexure P-1), passed by the Adjudicating Officer, Haryana Real Estate Regulatory Authority, Gurugram, and the order dated 12.01.2022 (Annexure P-2), passed in Appeal No.475 of 2021 by the Haryana Real Estate Appellate Tribunal, Chandigarh; with a further direction sought to respondent No.2 to restore and entertain the appeal against impugned order dated 20.08.2021 (Annexure P-1).

Mr. Khehar, learned counsel for the petitioner, submits that the impugned order passed by the Adjudicating Officer, on August, 20, 2021 (Annexure P-1), lacks inherent jurisdiction inasmuch as he could not have adjudicated upon whether or not any refund is to be given to respondent

the jurisdiction of the Haryana Real Estate Regulatory Authority itself, as has also been held by the Supreme Court in 'M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and others', from which judgment he refers to paragraph No.86, as follows:-

“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.

Learned counsel therefore submits that the impugned order itself being without jurisdiction and hence void *ab-initio* and consequently nonest, it would be unfair that the petitioner be required to make a pre-deposit before his appeal against that order is heard by the appellate authority, i.e. the Haryana Real Estate Appellate Tribunal and consequently,

the appeal filed by the petitioner before that authority (Tribunal) may be directed to be heard without insisting on a pre-deposit (to be deposited in terms of Section 43(5) of the Real Estate (Regulation and Development) Act, 2016).

Having heard counsel for the petitioner on that issue, whereas there is merit in what he is contending and in the opinion of one of us (Amol Rattan Singh, J.), it would be a very valid argument, however, it is to be noticed that on a similar question, a co-ordinate Bench of this court has dismissed (1) CWP No.13455 of 2021—M/s Country Colonisers Pvt. Ltd. Vs. State of Punjab and others, decided on 14.12.2021, (2) CWP No.3670 of 2022—Supertech Pvt. Ltd. Vs. Union of India and others, decided on 24.02.2022, (3) CWP No.3179 of 2022—M/s Silverglades Infrastructure Private Ltd. Vs. Bijoya Mohanty and another, decided on 02.03.2022 . The issue raised therein also being to the same effect, i.e. that the adjudicating authority had no jurisdiction to determine as to whether any refund was to be paid or not to be paid, (and that his jurisdiction would 'come in' only after that basic question has been decided and hence his jurisdiction is limited to the quantification of any refund and interest thereupon).

In the orders passed in the aforesaid three petitions, this court had refused to entertain the writ petitions challenging similar orders of the Adjudicating Authority as has been impugned in the present case and had relegated the petitioners therein to the remedy before the Appellate Authority (Tribunal). Though of course the issue of pre-deposit has not been specifically dealt with in the orders but it being implicit therein that the pre-deposit would be required to be made, that being a statutory provision and

therefore no exemption from such deposit having been made by this court (in aforesaid three orders).

Consequently, while following the aforesaid precedents, the petition is therefore dismissed, with the petitioner obviously to take his remedy before the appellate authority upon making a pre-deposit as is required.

Learned counsel for the petitioner submits that the appeal earlier filed by the petitioner having been dismissed by the appellate Tribunal, on 12.01.2022, vide the order Annexure P-2, and the petitioner having approached this court, vide this petition, on 18.01.2022, the issue of limitation in filing a fresh appeal before the Tribunal, may not be an impediment to entertain the appeal he now files.

In view of the fact that petitioner had approached Appellate Authority (Tribunal) at the first instance within limitation (as would seem to be it from the order passed, with no such issue raised therein), and thereafter having almost immediately approached this Court, therefore if the appeal is filed within a period of 15 days from the date of receipt of a certified copy of this order, the issue of limitation would not come in its way.

(AMOL RATTAN SINGH)
JUDGE

(LALIT BATRA)
JUDGE

29.03.2022
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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No