

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

RERA-APPL. No.66 of 2020 (O&M)

Date of Decision: 10.07.2023

M/s Cosmos Infra Engineering India Private Limited
through its Managing Director Vinod Mittal

..... Appellant

Versus

Teena Sood and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Gaurav Chopra, Senior Advocate assisted by
Mr. Reshabh Bajaj & Mr. Vardaan Seth, Advocates
for the appellant.

Mr. Rajesh Lamba, Advocate for the respondents.

MAHABIR SINGH SINDHU, J.

Present appeal has been preferred under Section 58 of the Real Estate (Regulation and Development) Act, 2016 (*for short 'the Act'*) against the impugned order dated 21.07.2020, passed by the Haryana Real Estate Appellate Tribunal (*for short 'Tribunal'*), whereby an appeal against the order dated 10.04.2019 of the Haryana Real Estate Regulatory Authority, Gurugram (*for short 'Authority'*) was dismissed.

(2) Paper-book reveals that respondents (*hereinafter referred as 'complainants'*) filed a complaint dated 05.09.2018 against the appellant

(hereinafter referred as 'promoter') before the Authority, under Section 31 of the Act, claiming following reliefs:-

- “(i) Direct the respondents to refund the amount of Rs.65,68,596/- along with interest @ 24% per annum on compounded rate from the date of booking of the flat in question;*
- “(ii) Any other relief which this hon’ble authority deems fit and proper may also be granted in favour of the complainants.”*

(3) The promoter opposed above prayer while filing detailed reply.

(4) After hearing both sides and taking into consideration the material available on record, the Authority allowed the appeal, vide order dated 10.04.2019, with the following directions:-

- “(i) The respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f. 02.09.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.*
- “(ii) The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.*
- “(iii) Complainants is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.*
- “(iv) The promoter shall not charge anything from the complainants which is not part of the BBA.*
- “(v) Interest on the due payments from the complainants shall be charged at the prescribed rate of interest i.e. 10.75% by the promoter which is the same as is being granted to the complainants in case of delayed possession.”*

(5) Apart from above directions, the Authority also issued a Show

Cause Notice to the promoter while observing in para No.26 as under:-

“Since the project is not registered, notice under section 59 of the Real Estate (Regulation & Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to issue show cause notice to the builder-respondent under the Act to show cause as to why a penalty of 10% of the cost of the project may not be imposed.”

(6) Aggrieved against the above order of the Authority, the promoter preferred an appeal; but the same has been dismissed by learned Tribunal, vide order dated 21.07.2020; hence, present appeal.

(7) Learned Senior Counsel for the promoter raised following contentions:-

- (i) at no point of time, the complainants made claim for possession along with compensation and/or interest; thus, under Section 31 of the Act, the Authority had no jurisdiction to entertain, try and adjudicate the complaint in question;
- (ii) for the purpose of granting compensation under Sections 12, 14, 18 & 19 of the Act, Adjudicating Officer is the only competent person and the Authority had no jurisdiction in this regard;
- (iii) from conjoint reading of Sections 31 & 71 of the Act read with Rules 28 and 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (*for short ‘Rules of 2017’*), the Authority enjoys the statutory power to levy penalties and/or to set aside an order cancelling allotment; but does not have any jurisdiction to grant relief in terms of Sections 12, 14, 18 & 19 (*ibid*). Thus, impugned order dated 10.04.2019, passed by the Authority, is null and void; being *coram non judice*;
- (iv) as per Rule 28, an aggrieved person may file a complaint with the Authority for violation of any provisions of the

Act, Rule or Regulation, made thereunder; but the same is to be dealt with only by the Adjudicating Officer;

- (v) an order or decree passed by a Court, being without jurisdiction over the subject matter, goes to the root of a case; and as such, plea in this regard can be raised at any stage, even before the Executing Court or during the collateral proceedings. Reference in this regard was made to **Sarwan Kumar and another Versus Madan Lal Aggarwal, AIR 2003 SC 1475;**
- (vi) the approach of learned Tribunal is wholly illegal while relying upon the provisions of Order XXIII Rule 1(1) of the Code of Civil Procedure, 1908 (*for short 'CPC'*) to the effect that complainants can abandon the claim regarding "refund of amount"; but failed to consider that complaint itself was beyond the purview of the Authority;
- (vii) the project in question had been launched prior to coming into force of the Act; the Flat Buyers Agreement, governing rights and obligation of the parties, was executed wayback on 02.03.2013; thus, the Authority did not have jurisdiction to entertain the complaint in question.
- (viii) the Authority as well as learned Tribunal, while passing the impugned orders, have given retrospective effect to the Act; hence, the same are not legally sustainable. Reference was also made to the judgment of Hon'ble Supreme Court in "**M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of UP & Ors. Etc. (2021) 9 SCR 909.**"

(8) On the other hand, learned Counsel for the complainants, while opposing the appeal, made following submissions:-

- (i) the Flat Buyers Agreement was executed on 02.03.2013; as per Clauses 3.1 & 5.1 thereof, the promoter was under

obligation to complete the construction within four years + six months' grace period i.e. latest by 02.09.2017;

- (ii) as a matter of fact, uptill 10.04.2019, only 55-60% construction work had been completed by the promoter, thus, the complainants had no option except to file the complaint under Section 31 of the Act;
- (ii) that out of total sale consideration of ₹ 82,62,185/-, the complainants had already paid an amount of ₹ 65,68,596/-, yet there was no progress of construction; therefore, the complaint was rightly filed for refund of the amount deposited along with interest @ 24% per annum from the date of booking;
- (iii) at the time of filing the complaint, the project in question was an ongoing project in view of the fact that it was registered with the Authority only on 14.10.2019. Even uptill filing of the complaint, neither the construction had been completed; nor the Occupation Certificate was issued by the competent authority; hence, the promoter cannot wriggle out from the purview of the Act.
- (iv) that there were gross violations of the Act, Rules of 2017 as well as the Haryana Real Estate Regulatory Authority, Gurugram (General), Regulations, 2018 (*for short 'Regulations of 2018'*) by the promoter and as such, the Authority was having jurisdiction to entertain the complaint in question; thus, prayed for dismissal of the appeal.

(9) Heard both sides and perused the paper-book.

(10) After hearing parties, the points for consideration of this Court would be as under:-

- (I) *Whether in view of the facts and circumstances of the case, project in question was an 'ongoing project' and governed under the Act or not?;*

- (II) Whether the Authority had jurisdiction under Section 31 of the Act to entertain and adjudicate the complaint dated 05.09.2018?;
- (III) Whether impugned orders dated 10.04.2019 & 21.07.2020, passed by the Authority as well as learned Tribunal, respectively, are legally sustainable?

POINT-I

(11) Before proceeding further, it would be appropriate to recapitulate some undisputed factual details to decide the controversy and which are as under:-

1.	DTCP License Number with date	70 of 2011 dated 22.07.2011; (valid up to 21.07.2015)
2.	Name and Location of the Project	"Cosmos Express 99" Sector 99, Gurugram
3.	Nature of Project	Group Housing
4.	Unit Number in question	D-403, 'Copper', Tower D
5.	Area of the Unit	1310 Sq. Ft.
6.	License Holder	M/s Shivanandan Buildtech Pvt. Ltd.
7.	Flat Buyer Agreement	02.03.2013
8.	Total Sale Consideration	₹ 82,62,185/-
9.	Amount paid by the complainants	₹ 65,68,596/-
10.	Payment plan	Construction linked
11.	Date for completion of construction.	As per Clause 3.1 read with 5.1, the construction was to be completed within 4 years from the start of construction or execution of the agreement whichever is later + 6 months grace period i.e. 02.09.2017
12.	Penalty clause as per Flat Buyer Agreement	In terms of Clause 5.1, penalty of ₹ 5/- per sq. ft. per month of the super area.
13.	Date of filing the complaint	05.09.2018
14.	Number & Date of registration with the Authority under the Act	Registration No.62 of 2019 Dated 14.10.2019
15.	Status of possession	Not handed over till date

(12) As noticed above, the Flat Buyers Agreement was executed between the parties on 02.03.2013 and relevant part of the same reads as under:-

“3.1 THAT the Developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said Flat is to be located, in 04 years from the start of construction or execution of this Agreement whichever is later, as per the said plans and specifications seen and accepted by the Flat Allottee(s) (with additional floors for residential units if permissible) with such additions, deletions, alterations, modifications in the layout, tower plans, change in number, dimensions, height, size, area or change of entire scheme the Developer may consider necessary or may be required by any competent authority to be made in them or any of them. To implement all or any of these changes, supplementary sale deed(s)/agreement(s), if necessary will be got executed and registered by the Developer which the Flat Allottee(s) undertakes to execute. If as a result of the above alteration etc., there is either reduction or increase in the super area of the said Flat or its location, no claim, monetary or otherwise will be raised or accepted except that the original agreed rate per sq.mtr./sq. ft. and other charges will be applicable for the changed area i.e. at the same rate at which the said Flat was registered/booked or as the Developer may decide and as a consequence of such reduction or increase in the super area, the Developer shall be liable to refund without interest only the extra basic price and other pro-rate charges recovered or shall be entitled to recover the additional basic price and other proportionate charges without interest as the case may be. If for any reason, the Developer is not in a position to allot the said Flat applied for, the Developer,

at its sole discretion, shall consider for any alternative property or refund the amount deposited with simple interest @ 10% per annum.

3.2 *THAT upon completion of the said Tower in which the said Flat is situate the Developer shall apply for the Occupation Certificate. Upon grant of the Occupation Certificate the Developer shall issue call for possession through issuance of a possession notice. For the purposes of this Agreement and this clause, the said Flat shall be considered complete upon the Developer applying for Occupation Certificate. The time taken for grant of Occupation Certificate shall be excluded at all times for computation of time.*

5.1 *In case within a period as provided hereinabove, further extended by a period of 6 (six) months if so required by the Developer, the Developer is unable to complete construction of the Said Flat as provided hereinabove (subject to force majeure conditions) to the Flat Allottee(s), who have made payments as required for in this Agreement, then the Flat Allottee(s) shall be entitled to the payment of compensation for delay at the rate of Rs.5/- (Rupees Five only) per sq. ft. per month of the super area till the date of notice of possession as provided hereinabove in this Agreement. The Flat Allottee(s) shall have no other claim against the Developer in respect of the said Flat and Parking Space under this Agreement.”*

(12.1) A perusal of Clauses 3.1 & 5.1 (*ibid*) clearly reveal that promoter was under obligation to complete the construction of the Unit in question within

four years (+ grace period of six months) from the date of execution of the Agreement i.e. on or before 02.09.2017.

(13) It is quite evident that during the pendency of complaint, a Local Commissioner was deputed by the Authority to get the actual position of the construction and as a result thereof, the Local Commissioner submitted his report dated 09.04.2019, while observing that overall progress of the project was approximately 55-60%.

The construction of Tower 'D' (where Unit in question is situated) was reported to be completed only up to 60% and reference in this regard can be made to para 22 of the order dated 10.04.2019, passed by the Authority and which reads as under:-

“Local Commissioner report has been received on 09.04.2019 and placed on record. The operative part of LC report is as under:-

- (i) The physical progress of the overall project is approximately 55-60%.*
- (ii) The physical progress of the tower-D in which unit of complainants is located is approximately 60%. ”*

(14) The Authority, after taking into consideration the fact that neither construction has been completed as per stipulated timeline; nor the project in question was registered under the Act, issued a Show Cause Notice to the promoter for imposing penalty of 10% of the cost of project, apart from issuing other directions while passing the order dated 10.04.2019.

(15) Faced with precarious situation, the promoter applied for Registration of the Project on 30.07.2019 and which was ultimately registered under the Act by the Authority on 14.10.2019, vide Registration Certificate

No.62 of 2019. For reference, relevant part of the Registration Certificate is extracted as under:-

HARERA GURUGRAM CONDITIONS OF REGISTRATION This registration is granted subject to the following conditions, namely:- (i) The promoter shall submit renewal of license no.70 of 2011 within a period of 3 months from issuance of this certificate; (ii) The promoter shall enter into an agreement for sale with the allottees as prescribed in The Haryana Real Estate (Regulation and Development) Rules, 2017; (iii) & (iv) (v) The promoter shall deposit hundred percent of the amounts realized by the promoter in a separate account to be maintained in a schedule bank to cover the cost of construction and the land cost to be used only for that purpose as per sub-clause (D) of clause (1) of sub-section (2) of section 4; (vi) The promoter shall comply with the provisions of the Real Estate (Regulation & Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017 and regulations made thereunder and applicable in the State; (vii) & (viii) (ix) The promoter shall comply with all other terms and conditions as mentioned in the attached brief and as conveyed by the Authority from time to time. Additional terms and conditions given at the end of the attached brief and if any observation same may be rectified within three months. VALIDITY OF REGISTRATION The registration of this project shall be valid for the period commencing from 14th October, 2019 and ending with 30th	FORM 'REP-III' [See rule 5(1)] HARYANA REAL ESTATE REGULATORY AUTHORITY GURUGRAM HARERA GURUGRAM REGISTRATION NO. 62 OF 2019 <table><tr><td>RC/REP/HARERA/GGM/ 368/100/2019/62</td><td>Date 14-10-2019</td></tr><tr><td>UNIQUE NO. GENERATED ONLINE</td><td>RERA-GRG-PROJ-276- 2019</td></tr></table> REGISTRATION CERTIFICATE REAL ESTATE PROJECT COSMOS EXPRESS 99/CASCADE GARDENS This registration is granted under section 5 of the Real Estate (Regulation & Development) Act, 2016 to the following project under project registration number as mentioned above. PARTICULARS OF THE NEW PROJECT<table><tr><th>S. No.</th><th>Particular</th><th>Detail</th></tr><tr><td>1.</td><td>Name of the project</td><td>Cosmos Express 99/Cascade Gardens</td></tr><tr><td>2.</td><td>Location</td><td>Sector 99. Dhankot, Gurugram</td></tr><tr><td>3.</td><td>Total licensed area of the project</td><td>13.32 Acres</td></tr><tr><td>4.</td><td>Area of project for registration</td><td>5.468 Acres</td></tr><tr><td>5.</td><td>Nature of the project</td><td>Group Housing</td></tr><tr><td>6.</td><td>Total FAR of the project</td><td>37302.543 sq. mts</td></tr><tr><td>7.</td><td>Number of Towers</td><td>Tower 2(B), Tower 1(C), Tower 4(D), Tower 5(E), Tower S (Service tower), EWS, Commercial</td></tr><tr><td>8.</td><td>Number of Units</td><td>Tower B-26, Tower C-52, Tower D-104, Tower E-104, Tower S-64, EWS-51, 7(Shops).</td></tr></table>	RC/REP/HARERA/GGM/ 368/100/2019/62	Date 14-10-2019	UNIQUE NO. GENERATED ONLINE	RERA-GRG-PROJ-276- 2019	S. No.	Particular	Detail	1.	Name of the project	Cosmos Express 99/Cascade Gardens	2.	Location	Sector 99. Dhankot, Gurugram	3.	Total licensed area of the project	13.32 Acres	4.	Area of project for registration	5.468 Acres	5.	Nature of the project	Group Housing	6.	Total FAR of the project	37302.543 sq. mts	7.	Number of Towers	Tower 2(B), Tower 1(C), Tower 4(D), Tower 5(E), Tower S (Service tower), EWS, Commercial	8.	Number of Units	Tower B-26, Tower C-52, Tower D-104, Tower E-104, Tower S-64, EWS-51, 7(Shops).
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<i>Sept, 2021 unless extended by the Authority in accordance with the Act and rules made thereunder subject to compliance of provisions of rule 5(1) of the Haryana Real Estate (Regulation and Development) Rules, 2017.</i>	NAME OF THE PROMOTERS		
	S. No.	Particular	Detail
	1.	Promoter 1/License holder	M/s Shivandan Buildtech Pvt. Ltd.
	2.	Promoter 2/ Developer [Change of developer)	M/s Cosmos Infra Engineering India Pvt. Ltd.
<i>This registration certificate is based on the information supplied by the promoter and an authenticated brief and declaration by the promoter is annexed herewith, which shall be read as part of this registration certificate.</i>			
<i>Dated 14-10-2019</i> <i>Place Gurugram</i> <i>(Dr. KK. Khandelwal)</i> <i>Chairman</i> <i>Haryana Real Estate Regulatory Authority, Gurugram</i>			

From perusal of Clause (vi) of the condition of the Registration Certificate, it is clearly discernible that “*the promoter shall comply with the provisions of the Real Estate (Regulation & Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017 and regulations made thereunder and applicable in the State*”.

(16) Admittedly, the project in question has been registered by the Authority only on 14.10.2019 and as such, there remains no doubt that on the date of filing the complaint i.e. 05.09.2018, the project was apparently incomplete. In such a scenario, there would be no hesitation to say that it was an ongoing project and thus, governed under the provisions of the Act.

Point No.I is decided accordingly.

POINT-II

(17) It transpires that initially, the promoter did not raise any plea of jurisdiction; but later on, an application was submitted before the Authority for rejection of the complaint on this count. A perusal of para 25 of the order

passed by the Authority also reveals that point of jurisdiction was duly considered; but the same had been rejected while observing as under:-

*“25. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in **Simmi Sikka V/s M/s EMAAR MGF Land Ltd.** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.”*

(18) Before learned Tribunal also, plea of jurisdiction was raised by the promoter. The complainants, instead of opposing the plea, made a statement on 04.03.2020, giving up the claim of “refund” made in the complaint and restricted the relief for interest on account of delay in possession. For reference, the statement made by the complainants before learned Tribunal is recapitulated as under:-

“That we give up the claim of refund sought in the complaint. We only want to pursue the case for grant of interest for delayed possession. The relief of refund mentioned in the complaint may be deemed to have been deleted. We are satisfied with the relief of interest for delayed interest awarded by the Id. Authority.”

(19) Although, learned Senior Counsel for the promoter emphatically assailed the course adopted by learned Tribunal, thereby permitting the complainants to give up the claim of refund, but the argument is liable to be rejected as the Authority was well empowered and having jurisdiction to entertain the complaint dated 05.09.2018 for the following reasons:-

(A) The Authority while adjudicating complaint under Section 31 of the Act is supposed to follow summary procedure and have vast powers, including granting relief for “return of the amount” to the allottee, along with interest. For reference, the relevant part of the Rule 28 of the Rules of 2017 as well as Regulations 25 & 28 of the Regulations of 2018 are extracted as under:-

“ Rule 28. Filing of complaint with Authority (section 31), and inquiry into allegations of contravention or violations (section 35) and disposal of complaint (section 36, section 37 and section 38).

(1)

(2) The Authority shall for the purposes of deciding any complaint as specified under sub-rule (1), shall follow summary procedure for inquiry in the following manner, namely: —

(a to j)

(k) the Authority may provide relief in such form as deemed appropriate including return of the amount to the allottee received by the promoter along with interest at the rate as prescribed in rule 15.

(l to n)

(3) The procedure for day to day functioning of the Authority, which have not been provided by the Act or the rules made thereunder, shall be as specified by regulations made by the Authority.

(4)

The Haryana Real Estate Regulatory Authority, Gurugram (General), Regulations, 2018

Saving of inherent power of the Authority:

25. Nothing in the Regulations shall be deemed to limit or otherwise affect the inherent power of the Authority to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Authority.

General power to amend/rectify:

28. The Authority may, at any time and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceedings before it (including any clerical or arithmetical error in any order passed by the Authority), and all necessary amendments, rectifications shall be made

for the purpose of determining the real question or issue arising in the proceedings.

Provided that if the Authority desires to make amendments or rectifications in order to determine the real question or issue arising the Authority shall provide an opportunity to the parties affected by such amendment or rectification touching the real question or issue to make representations and submissions with respect to the proposed amendment or rectification.”

Upon perusal of Rule 28 (*ibid*), it is discernible that the Authority may grant relief in such form as it deems appropriate, including return of the amount to the allottee received by the promoter *along with interest at the rate as prescribed in Rule 15* (i.e. State Bank of India’s highest marginal cost of lending rate + 2%). Also stipulated that procedure for day-to-day functioning of the Authority, which have not been provided by the Act or the Rules, made thereunder, shall be as specified by the Regulations made by the Authority.

(B) Again noteworthy that nothing in the Regulations shall be deemed to limit or otherwise affect the “*inherent power of the Authority to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Authority*” [vide Regulation 25 (*ibid*)].

(C) Still further, as per Regulation 28 (*supra*), the Authority may, at any time and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceedings before it and all necessary amendments, rectifications shall be made for the purpose of determining the real question or issue arising in the proceedings.

(D) The point of jurisdiction vested with the Authority for refund of amount and interest on the refund amount has already been settled by the

Hon'ble Supreme Court in **M/s Newtech Promoters** (*supra*) and para 86 of the same reads 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.”

(E) Moreover, a Division Bench of this Court, after relying upon the above judgment (**M/s Newtech**) while dealing with batch of petitions, including CWP No.6688 of 2021, titled as ‘**Ramprastha Promoters and Developers Pvt. Ltd. Versus Union of India and Ors.**’, decided on 13.01.2022, also held that the Authority has the jurisdiction in such like matters and reference in this regard can be made to para 9, 25 & 26 thereof, which are as under:-

“9. With the consent of the parties, arguments in the petitions were heard. The issues which emerge for determination in the present batch of petitions and set out as under:-

Issue No.1: Whether the Authority has jurisdiction to direct return/refund of the amount and/or interest to the allottee under Sections 12, 14, 18 and 19 of the Act of 2016?

xxxxx

25. In light of the pronouncement of the Supreme Court in the matter of *M/s Newtech Promoters (supra)*, the submission of the petitioner to await outcome of the SLP filed against the judgment in CWP No.38144 of 2018, passed by this Court, fails to impress upon us. The counsel representing the parties very fairly concede that the issue in question has already been decided by the Supreme Court. The prayer made in the complaint as extracted in the impugned orders by the Real Estate Regulatory Authority fall within the relief pertaining to refund of the amount; interest on the refund amount, or directing payment of interest for delayed delivery of possession. The power of adjudication and determination for the said relief is conferred upon the Regulatory Authority itself and not upon the Adjudicating Officer.

26. Hence, in view of the authoritative pronouncement of the Supreme Court in the matter of **M/s Newtech Promoters and Developers Private Limited Vs. State of UP And Others etc,** as recorded in Para 86 thereof, the Authority would have the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount as well as for payment of interest on delayed delivery of possession and/or penalty and interest thereon. The jurisdiction in such matters would not be with the Adjudicating Officer.”

(20) In view of the above discussions, the irresistible conclusion would be that even if the statement of complainants dated 04.03.2020, thereby giving up the claim for refund of amount is ignored or completely excluded; still the

Authority had the jurisdiction under Section 31 of the Act to entertain the complaint dated 05.09.2018.

Point No.II is decided accordingly.

POINT-III

(21) In view of the conclusion, recorded on point Nos.I & II (*supra*), it is duly established that project in question was an ‘ongoing project’ and the Authority had jurisdiction under Section 31 of the Act to entertain the complaint dated 05.09.2018. It is also evident that promoter failed to complete the construction as per timeline agreed between the parties. Also proved that promoter had collected more than 75% amount of total sale consideration and the complainants had availed Bank Loan for payment of such huge amount; yet they did not get anything till date, except lame excuses from the promoter.

(22) In view of the above, this Court is of the firm opinion that impugned orders dated 10.04.2019 & 21.07.2020, passed by the Authority as well as learned Tribunal, respectively, are absolutely legal and justified; hence, no interference is required while entertaining the appeal under Section 58 of the Act.

Point No.III is decided accordingly.

(23) Consequently, there is no option except to dismiss the present appeal.

(24) Ordered accordingly.

(25) Pending application(s), if any, shall also stand disposed off.

July 10th, 2023

Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes