IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RERA-APPL. No.91 of 2021 (O&M)

Date of Decision: 17.07.2023

M/s Ireo Grace Realtech Private Limited
through its Authorized Representative Vinod Kumar

.... Appellant

Versus

Dalip Chand and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Shekhar Verma, Advocate for the appellant.

Mr. Neeraj Gupta, Advocate for respondent No.1/cross-objector.

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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 16.09.2020, passed by the Haryana Real Estate Appellate Tribunal (*for short 'Tribunal'*), whereby an appeal, filed by respondent No.1 (*hereinafter referred as 'complainant'*), against the order dated 17.10.2018 of the Haryana Real Estate Regulatory Authority, Gurugram (*for short 'Authority'*), was allowed with the direction that he shall be entitled for refund of the entire amount of ₹ 24,65,913/- along with interest at SBI highest marginal cost lending rate + two percent i.e. 9.3% per annum from the date of institution of the complaint, till its realization.

(2) Paper-book reveals that complainant filed a complaint dated 16.02.2018 against the appellant (*hereinafter referred as 'promoter'*) before the Authority, under Section 31 of the Act, claiming following reliefs:-

> ***"(i)*** *Respondent may be directed to refund the entire deposited sum of Rs.24,65,913/- (Rupees Twenty Four Lacs Sixty Five Thousand Nine Hundred thirteen Only) paid by the Complainant along with interest @ 18% per annum from the date of payment till its actual realization;*
>
> ***(ii)*** *Respondent may be directed to compensate the Complainant with Rs.15,00,000/- (Rupees Fifteen Lakhs Only) due to inflation in property market proportionate size of Flat in the past 5 years.*
>
> ***(iii)*** *Respondent may be directed to pay the compensation of Rs.10,00,000/- (Rupees Ten Lakhs Only) for the mental agony and financial loss suffered by the Complainant;*
>
> ***(iv)*** *Respondent may be directed to Pay Rs.2,00,000/- (Rupees Two Lakh Only) to the Complainant on account of deficiency in the services of Respondent and also towards the litigation charges; and/or*
>
> ***(v)*** *Any other relief/s which this Hon'ble Tribunal may deem fit and proper in the interest of justice."*

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

(4) After hearing both sides and taking into consideration the material available on record, the Authority decided the complaint, vide order dated 17.10.2018, with the following directions:-

> ***"(i)*** *The authority is of the considered view that provisions of section 13 of the Real Estate (Regulation & Development) Act, 2016 prevails and the builder cannot forfeit more than 10% of the total consideration amount before signing of the*

agreement (since there is no signed agreement inter-se the parties on record).

(ii) *The builder is directed to refund the excess amount forfeited by the respondent to the complainant. No interest shall be payable in this context.*

(iii) *No interest shall be payable in this complaint."*

(5) The promoter did not challenge the aforesaid order of the Authority; however, the complainant feeling aggrieved preferred an appeal before the Tribunal, which was allowed on 16.09.2020 to the extent that he shall be entitled for refund of the entire amount of ₹ 24,65,913/- along with interest at SBI highest marginal cost lending rate + two percent i.e. 9.3% per annum from the date of institution of the complaint, till its realization and for reference, the relevant part of the order reads as under:-

> ***"34.*** *Thus, keeping in view our aforesaid discussions, the present appeal is hereby allowed. The impugned order passed by the learned Authority stands modified to this extent that the appellant/allottee shall be entitled to the refund of the entire amount of Rs.24,65,913/- deposited by him with the respondent/promoter with interest at SBI highest marginal cost lending rate plus two percent i.e. 9.3% per annum from the date of the institution of the complaint till realization. Consequently, the complaint filed by the complainant stands allowed accordingly."*

(6) Dis-satisfied with the above order, the promoter has preferred present appeal while raising the following contentions:-

(i) the project was not an ongoing project as an application seeking Occupation Certificate was moved on 10.09.2019; thus, in view of the provisions of Rule 2(o) of the Haryana Real Estate (Regulation and Development) Rules, 2017 (*for short 'Rules of 2017'*), the project in question was exempted from the purview of the Act;

(ii) as the allotment of Apartment in question was cancelled; deposit was forfeited vide letter dated 11.02.2015; allotment was offered to be restored on 20.04.2015 and complaint was filed on 16.02.2018; thus, the same was barred by limitation;

(iii) the Authority had no jurisdiction to entertain, try and adjudicate the complaint in question, yet it is held that promoter cannot forfeit more than 10% of the total sale consideration;

(iv) similarly, the Tribunal, vide impugned order dated 16.09.2020, wrongly directed the refund of entire amount of ₹ 24,65,913/- along with interest at SBI highest marginal cost lending rate + two percent i.e. 9.3% per annum from the date of institution of the complaint, till its realization;

(v) since the complainant failed to pay the third installment due in time; therefore, there was nothing wrong with the cancellation of allotment as well as forfeiture of earnest money in terms of the provisional allotment letter;

(vi) in view of Rule 28 of the Rules of 2017, for violation of any provisions of the Act, Rule or Regulation, made thereunder, an aggrieved person may file a complaint with the Authority, but the same is to be dealt with only by the Adjudicating Officer and not at the level of Authority;

(vii) an order or decree passed by a Court, being without jurisdiction over the subject matter, goes to the root of the controversy; hence, 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**;

(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. In support of contentions, learned Counsel has vehemently relied upon 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**."

(7) On the other hand, learned Counsel for the complainant, while opposing the prayer, made following submissions:-

(i) that out of total sale consideration of ₹ 1,13,75,000/-, an amount of ₹ 24,65,913/- (more than 10% of the total sale consideration) was paid by the complainant; but instead of executing any Apartment Buyer Agreement, the promoter unilaterally increased the sale price from ₹ 8750/- to ₹ 9200/- per Sq. Ft. Therefore, the complainant had no option except to approach the Authority for refund of the amount deposited along with interest @ 18% per annum from the date of booking;

(ii) at the time of filing the complaint, the project in question was still going on and it was got registered by the promoter with the Authority under the Act on 07.12.2017 uptill 30.06.2020 and later on, got extension from 04.01.2021 to 30.06.2021. Even on the date of filing of the complaint, no Occupation Certificate had been issued by the competent authority; hence, the project in question was duly covered under the purview of the Act on the date of filing the complaint being an ongoing project;

(iii) that promoter had grossly violated the provisions of the Act, Rules of 2017 as well as the Haryana Real Estate Regulatory Authority, Gurugram (General), Regulations, 2018 *(for short 'Regulations of 2018')* and as such, the

Authority was having jurisdiction to entertain the complaint in question and rightly entertained the complaint in question;

(iv) while making reference to the cross-objections, learned Counsel for the complainant submitted that the Authority as well as Tribunal have failed to consider that complainant is entitled for interest from the date of deposit of the amount of ₹ 24,65,913/- till its refund; hence, the cross-objections be accepted and the order passed by the learned Tribunal be modified to that extent.

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

(9) The points for consideration of this Court would be as under:-

(I) *Whether in view of the facts and circumstances of the case, the project in question was an 'ongoing project' and governed under the Act?;*

(II) *Whether the Authority had jurisdiction under Section 31 of the Act to entertain and adjudicate the complaint dated 16.02.2018?;*

(III) *Whether the complaint in question was barred by limitation?;*

(IV) *Whether impugned orders dated 17.10.2018 & 16.09.2020, passed by the Authority as well as learned Tribunal, respectively, are legally sustainable?*

(V) *Whether the cross-objections at the instance of complainant are maintainable under Order 41 Rule 22 CPC?*

<u>POINT-I</u>

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

1.	*DTCP License Number with date*	*05 of 2013 dated 21.02.2013*

2.	*Name and Location of the Project*	*"The Corridors", Phase-2, Sector 67-A, Gurugram, Haryana*
3.	*Nature of Project*	*Group Housing*
4.	*Unit/Villa Number in question*	*CD-C10-14-1404*
5.	*Area of the Unit*	*1300 Sq. Ft.*
6.	*License Holder*	*M/s Precision Realtors Pvt. Ltd. & 3 others*
7.	*Apartment Buyer's Agreement*	*Not Executed*
8.	*Total Sale Consideration*	*₹ 1,13,75,000/-*
9.	*Amount paid by the complainant*	*₹ 24,65,913/-*
10.	*Payment Plan*	*Development Link-Retail*
11.	*Date of filing the complaint*	*16.02.2018*
12.	*Number & Date of registration with the Authority under the Act*	*Registration No. 377 of 2017 Dated 07.12.2017 (Revised on 04.01.2021)*
13.	*Status of possession*	*Not handed over till date*

(11) It is noteworthy that after hearing learned Counsel for the appellant at some length, on 14.10.2021, notice of motion was issued to the following extent:-

> *"The respondent filed a complaint before the Real Estate Regulatory Authority, Gurugram (hereafter referred to as authority) that the appellant had unauthorizedly forfeited amount of Rs.24,65,913/- paid as booking amount. Thus, direction be issued to it to refund the said amount along with interest. The authority directed refund of 10% of the amount paid upon its interpretation of Section 13 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as Act). Aggrieved, the complainant-respondent filed an appeal which has been allowed. The appellant has been directed to refund the entire amount forfeited along with interest at the rate of 9.3% per annum from the date of institution of the complaint till realization.*
>
> *Bare essential facts are that according to the complaint filed, the complainant had booked a unit in a project advertised by the appellant. First installment amounting to Rs.10 lacs was paid by way of cheque and receipt thereof is dated 11.03.2013. Second installment of Rs.14,65,913/- was paid in June, 2013 and the receipt thereof is dated 04.06.2013. Thereafter, the appellant sent*

an application for signature of the complainant on 26.06.2013. This would constitute a formal application for allotment and pursuant thereto provisional allotment dated 12.08.2013 was issued. Since the complainant failed to pay the third installment in accordance with the schedule laid down in the provisional allotment letter, demand letter dated 18.03.2014 was issued. Thereafter, the petitioner communicated his objection to the allotment letter on 07.04.2014 stating that the price mentioned in the allotment letter was in excess of that agreed orally. The appellant-respondent has stated that the price has not been changed. Charges for parking space were exclusive of the price of the unit and the increase was only on account of this fact. However, the dispute continued and finally the allotment was cancelled vide communication dated 11.02.2015. The earnest money paid was forfeited. This was followed by an offer dated 20.04.2015 of restoration of the allotment at the rate mentioned in the provisional letter of allotment but the same was refused by the complainant. Complaint was subsequently filed on 16.02.2018.

Learned counsel for the appellant has submitted that the allotment was cancelled prior to the coming into force of the Act and, thus, the Act cannot apply to this transaction.

The argument is misconceived. By virtue of the Act, certain remedies have made available to allotees/buyers of real estate. The remedies have become available with effect from the date of implementation of the Act. A party aggrieved by an action prior to the said date may avail all the remedies available under the Act provided the authority has jurisdiction in the matter. Just because the action against which allottee/buyer is aggrieved was done before the date of implementation of the Act, it cannot be said that the provisions of the Act would not apply, more so, when the Act has been made applicable to all ongoing projects. It is not the case of the appellant that the project stood completed before the coming into force of the Act and, thus, the contention has to be rejected.

It has next been contended that Section 18 of the Act governs refund of amount of compensation. The said provision relates to a situation where a promoter is unable to give possession in *accordance with the terms of the agreement. Such a situation has not arisen in this case and for this reason also, the authority had no jurisdiction to direct refund.*

This argument also cannot be accepted for the reason that Section 18 of the Act is not exhaustive of the powers of the authority. It caters to a particular situation but it does not mean that in a situation as the present one, the authority has no jurisdiction. Section 34 of the Act lists the functions of the authority. One of the obligations cast upon promoters is that its actions must not be oppressive and borne out of the unequal barganing power of the promoter. If an allottee/buyer feels that he has been treated unfairly by a promoter, he can always complain against such treatment. In this case, the complaint is that forfeiture has been effected without valid grounds. Thus, the allegation is that the promoter has violated the obligations cast upon him to be fair in his dealings and accordingly, the authority would have jurisdiction to decide such complaints.

The next argument is that the complaint was barred by limitation having been filed more than three years after the cancellation of allotment and forfeiture of amount. The submission is that even if objection of limitation has not been raised specifically, the Court is duty bound to consider this aspect. Having not done so, the order passed by the authority has been rendered non-est and void. Still further, the finding of the Appellate Authority that no agreement had come into being is also erroneous because the complainant himself has averred that an oral agreement came into being.

Notice of motion for 03.02.2022 to the aforementioned limited extent.

Meanwhile, operation of order of the Tribunal shall remain stayed."

(12) A perusal of the aforesaid order reveals that contention of petitioner to the effect that "the allotment was cancelled prior to the coming into force of the Act and thus, the Act cannot apply to these transactions" was outrightly 'rejected'. Similarly, the argument that the Authority had no jurisdiction to direct refund was also negated and it was held that "the Authority would have jurisdiction to decide such complaints."

(13) Apart that, after coming into force the provisions of Act, promoter got the project registered with the Authority on 07.12.2017 (valid up to 30.06.2020). For reference, the Registration Certificate is extracted hereasunder:-

HARYANA REAL ESTATE REGULATORY AUTHORITY,
HUDA COMPLEX, SECTOR-6, PANCHKULA-134109

FORM 'REP-III'
[See rule 5(1)]

REGISTRATION CERTIFICATE OF PROJECT
(Regd. No. 377 of 2017 dated 07.12.2017)

To

Ireo Grace Realtech Pvt. Ltd.
304, Kanchan House, Karampura,
Commercial Complex,
New Delhi 110015

Memo No. HRERA-210/2017/2264 *Dated 07.12.2017*

Subject: Registration of Real Estate Group Housing Colony namely "The Corridors. (Phase 2)" being developed over an area of 13.152 acres situated in Sector- 67-A, Village Dhumaspur & Maidawas, Tehsil Sohna, Gurugram, Haryana being developed by Ireo Grace Realtech Pvt. Ltd. under RERA Act, 2016 and HRERA Rules, 2017.

Ref: Your application dated 27.07.2017 and 22.09.2017.

Your request for registration of Group Housing Colony being developed over an area of 13.152 acres situated in Sector-67-A, Village Dhumaspur & Maidawas, Tehsil Sohna, Gurugram, Haryana with regard to License No. 05 of 2013 dated 21.02.2013 issued by the Director, Town and Country Planning Department, Haryana, has been examined vis-a-vis the provisions of the Real Estate (Regulation and Development) Act, 2016 and HRERA Rules, 2017 and accordingly a registration certificate is herewith issued with following terms and conditions:-

(i) The Promoter shall comply with the provisions of the Act and the rules and regulations made there under;

(ii) The Promoter shall deposit seventy percent of the amount to be realized from the allottees by the Promoter in a separate account to be maintained in a schedule bank to meet exclusively the cost of land and construction purpose as per provision of Section 4 (2) (L) (D);

(iii) The registration shall be valid for a period commencing from 07.12.2017 to 30.06.2020:

(iv) The Promoter shall offer to execute and register a conveyance deed in favour of the allottees or the association of the allottees, as the case may be, of the apartment, plot or building as the case may be, or on the common areas as per provision of section 17 of the Act;

(v) The Promoter shall take all the pending approvals from various competent authorities on time;

(vi) The Promoter shall pay all outstanding payment i.e. land cost, construction cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, bank and financial institutions which are related to the project until he transfers the physical possession of the real estate project to the allottees or the associations of allottees, as the case may be;

(vii) The Promoter shall be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the Municipal Corporation, Gurugram or any other local authority/Association of the Allottees, as the case may be;

(viii) The Promoter shall not accept a sum more than ten percent of the cost of the apartment, plot or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force;

(ix) The Promoter shall adhere all the terms and conditions of this registration and license, sanctioned plans and other permissions issued by Competent Authorities under the provision of any other law for the time being in force as applicable to the project. In case any deficiency in fee is found at later stage and the same shall be recoverable from the promoter/owner accordingly.

(x) The promoter shall return the amount with interest in case, allottee wishes to withdraw from the project due to discontinuance of promoter's business or promoter fails to give possession of the apartment/plot in accordance with terms and conditions of agreement for sale in terms of sub-section(4) of Section-19. The promoter shall return the entire amount with interest as well as the compensation payable. The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent. The promoter shall adhere the provisions of The Real Estate

(Regulation and Development) Act, 2016 and its Rules 2017 issued by the State Government.

(xi) The promoter shall adopt the model agreement for sale (Annexure-A) of the Haryana Real Estate (Regulation and Development) Rules, 2017 at the time of booking from the prospective allottees.

(xii) The Promoter shall, upon receiving his Login Id and password under clause (a) of sub- section (1) or under sub-section (2) of section 5, as the case may be, create his web page on the website of the Authority and enter all details of the proposed project as provided under sub-section (2) of section 4, including the followings:-

a) details of the registration granted by the authority:
b) quarterly up-to-date list of number and type of apartments for plots, as the case may be, booked;
c) quarterly up-to-date the list of number of garages/covered parking lot booked;
d) quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate;
e) quarterly up-to-date status of the project, and
f) such other information and documents as may be specified by the regulations made by the authority.

(xiii) The Promoter shall be responsible to make available to the allottees, the following information at the time of the booking and issue of allotment letter:-

a) sanctioned plans, layout, along with specifications, approved by the competent authority and other information as prescribed in Rule 14 of 2017 framed under the provision of the Real Estate (Regulation and Development) Act 2016 and the same shall be displayed at the site or such other place as may be specified by the regulations made by the Authority.

(xiv) The registration further subject to following conditions:-

a) the promoter shall submit the detail of development work plan as provided in Rule 14(1) (a) (b) (c) VII of the Rules of HRERA within one month time.

Sd/-
Executive Director
HARYANA REAL, ESTATE REGULATORY AUTHORITY"

(14) A bare perusal of clause (viii) of the aforesaid Registration Certificate, *inter alia,* reveals that the promoter shall not accept more than 10% of the cost of Apartment as an advance payment or an application fee without first entering into a written agreement for sale with such person and register the said agreement under any law for the time being in force.

(15) Initially, the total sale price of the Apartment was stated to be ₹ 1,13,75,000/- (₹ 8750/- x 1300 Sq. Ft.) and the complainant had paid an amount of ₹ 24,65,913/- (₹ 10 Lakh, vide receipt dated 11.03.2013 & ₹ 14,65,913/- vide receipt dated 04.06.2013); but till date, no written agreement has been executed by the promoter. It is matter of record that initial Registration dated 07.12.2017 was got extended by the promoter from the Authority on 04.01.2021 for a period of six months, vide Extension No.01 of 2021 and for reference, the relevant part of the same reads as under:-

HARERA GURUGRAM

CONDITIONS OF EXTENSION OF REGISTRATION IN CONTINUATION OF REGISTRATION CERTIFICATE

This extension of registration is granted subject to the following conditions, namely:-

(i) The promoter shall submit copy of renewal of license, Environment Clearance, Beneficial Interest Permission revised service plans and estimates and AAI NOC within 1 month from issuance of this certificate;

(ii) The promoter shall submit the copy of occupation certificate when received from the by the competent authority.

(iii) The promoter shall offer to execute and register a conveyance deed in favour of the allottee(s) for Plot/Unit/Apartment for Residential/Commercial/Industrial/ IT/ any other usage (as the case may be) along with parking (if applicable);

(iv) If there is any increase in the taxes/charges/fees/levies etc. after the expiry of the scheduled date of completion of the project as per registration with the authority, which shall include the extension of the registration, if any, granted to the said

FORM 'REP-V' [See rule 6(3)]

HARYANA REAL ESTATE REGULATORY AUTHORITY GURUGRAM

HARERA GURUGRAM

EXTENSION NO. 01 OF 2021	
RC/REP/HARERA/GGM/ 2017/377	**_Date 04-01-2021_**

EXTENSION OF REGISTRATION CERTIFICATE

REAL ESTATE PROJECT

THE CORRIDORS PHASE-2

The registration granted vide no.2017/377 revised as 2021/01 under section 6 of the Real Estate (Regulation & Development) Act, 2016 to the following project under project extension number as mentioned above.

PARTICULARS OF THE NEW PROJECT

_S. No._	**_Particular_**	**_Detail_**
_1._	_Name of the project_	_The Corridors Phase-2_
_2._	_Location_	_Sector 67-A, Gurugram_
_3._	_Total licensed area of the project_	_37.512 Acres_
_4._	_Area of project for registration_	_13.512 Acres_

projected by the authority, as per the Act, the same shall not be charged from the allottee.

(v) This Extension is granted without prejudice to rights of allottees under section 18 as the promoter fail to prove reasonable circumstances and without fault to complete the project in the timeline declared under section 4(2)(1)(c).

VALIDITY OF REGISTRATION

The extension for registration shall be extended by a period of six months and shall be valid till 30th June, 2021.

5.	*Nature of the project*	*Group Housing*
6.	*Total FAR of the project*	*92954.53 sq. mts*
7.	*Number of Towers*	*13*
8.	*Number of Units*	*658*

NAME OF THE PROMOTERS

S. No.	***Particular***	***Detail***
1.	*Promoter 1/License holder*	*M/s Precision Realtors Pvt. Ltd. & 3 others*
2.	*Promoter 2/ Developer*	*M/s Ireo Grace Realtech Pvt. Ltd.*

This extension of registration certificate is based on the information supplied by the promoter and an authenticated brief of which is annexed herewith, which shall be read as part of this extension of registration certificate.

Dated 01-01-2021 ***(Dr. KK. Khandelwal)***
Place Gurugram ***Chairman***
Haryana Real Estate Regulatory Authority, Gurugram

(16) Again, perusal of Clause (v) of the above extract reveals that extension was granted without prejudice to the rights of allottees under Section 18 as the promoter failed to prove reasonable circumstances and without fault to complete the project in the timeline declared under Section 4(2)(1)(c).

(17) Above all, as per the case of promoter itself, they were granted partial Occupation Certificate of the project only on 27.01.2022; thus, in such a scenario, there is no hesitation to observe that the project in question was an 'ongoing project' on the date of filing of the complaint i.e. 16.02.2018.

Point No.I is decided accordingly.

<u>POINT-II</u>

(18) The point of jurisdiction vested with the Authority for refund of amount and interest on the refund amount is no longer *res integra*; rather the same has already been settled by the Hon'ble Supreme Court in **M/s Newtech** *(supra)* and para 86 of the same reads as under:-

> *"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."*

(19) Still further, a Division Bench of this Court, after relying upon the **M/s Newtech** *(supra)* 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 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) Additionally, Rule 28 (k) also talks about the jurisdiction of the Authority for return of the amount in such like matters and for reference, same is extracted as under:-

> *"(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 (i.e. State Bank of India's highest marginal cost of lending rate + 2%)."*

(21) In view of the above discussions, the irresistible conclusion would be that the Authority had jurisdiction under Section 31 of the Act to entertain the complaint dated 16.02.2018.

Point No.II is decided accordingly.

POINT-III

(22) Although, learned Counsel for the promoter emphatically raised a plea of limitation; but the same is liable to be rejected for the simple reason that the allotment of Apartment in question was cancelled by the promoter vide communication dated 11.02.2015 and the same was offered to be restored to the complainant on 20.04.2015. It is not in dispute that the complaint was filed on 16.02.2018 i.e. within a period of three years from the date of offer of restoration, which in the opinion of this Court is quite reasonable. Even otherwise, learned Counsel for the promoter is not able to show any interdict under the Act or Rules for entertaining a complaint by the Authority in such like matters within a period of three years. Thus, in such a scenario, when the promoter had failed to discharge its obligations, the complainant cannot be left in lurch or without any remedy to invoke the jurisdiction of the Authority for claiming the desired relief under the Act.

(23) In view of the above, plea of limitation raised by promoter being totally unfounded is hereby rejected.

Point No.III is decided accordingly.

POINT-IV

(24) Although, learned Counsel for the complainant tried to raise a plea that no written agreement was executed between the parties; but that would be of no help in view of the fact that whole action of the promoter is found to be legally unsustainable thereby forfeiting the earnest money; thus, the Authority as well as learned Tribunal both were justified in granting relief to the complainant while passing the impugned orders.

(25) In view of the above, this Court is in full agreement with the reasoning assigned by the Authority as well as learned Tribunal, while passing the impugned orders dated 17.10.2018 & 16.09.2020, respectively; hence, no interference is required by entertaining the present appeal under Section 58 of the Act.

Point No.IV is decided accordingly.

POINT-V

(26) As per Section 58 of the Act, any person aggrieved may prefer an appeal to the High Court and for reference, the same reads as under:-

> *"**58. Appeal to High Court.**—(1) Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908):*
>
> *Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.*

> *Explanation.—The expression "High Court" means the High Court of a State or Union territory where the real estate project is situated.*
>
> *(2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties."*

(27) The complainant instead of preferring an appeal under Section 58 of the Act has filed cross-objections under Order 41 Rule 22 CPC. However, on repeated asking of this Court, learned Counsel is not able to show that such recourse is permissible at the instance of an aggrieved person. Even otherwise, from bare perusal of Section 58 (*supra*), it is clearly discernible that an aggrieved person may file an appeal before the High Court; however, there is no provision to entertain the cross-objections at the instance of an aggrieved person. Hence, the cross-objections, filed by the complainant, are rejected being not maintainable.

Point No.V is decided accordingly.

(28) As a result thereof, there is no option except to dismiss the appeal.

(29) Ordered accordingly.

(30) However, it is made clear that this order be not treated as a bar to the complainant to take recourse to the remedy of an appeal under Section 58 of the Act for the desired relief, if so advised.

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

July 17th, 2023 **(MAHABIR SINGH SINDHU)**
Gagan **JUDGE**

Whether speaking/reasoned	*Yes*
Whether Reportable	*Yes*