

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

**119, 114 and 115/4**

***2023:PHHC:119631-DB***

**CWP Nos.20035, 19662 & 19769 of 2023**

**Date of Decision: 12.09.2023**

IREO Grace Realtech Pvt. Ltd. and others

.....Petitioner(s)

Versus

State of Haryana and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA  
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Shekhar Verma. Advocate, for the petitioners.

Mr. Aman Bahri, Addl. A.G., Haryana.

**G.S.SANDHAWALIA, J. (Oral)**

1. The present order shall dispose of 3 writ petitions i.e. CWP Nos.20035, 19662 and 19769 of 2023 since common questions of facts and law are involved. Reference is being made to ***CWP No. 20035 of 2023, IREO Grace Realtech Pvt. Ltd. and others vs. State of Haryana and others.***

2. Challenge in the present writ petitions is to orders dated 29.10.2021 (Annexure P-11) passed by the Adjudicating Officer i.e. respondent No.2-Haryana Real Estate Regulatory Authority based at Gurugram under the provisions of the Real Estate (Regulation and Development) Act, 2016 (in short 'the Act').

3. The facts of CWP No. 20035 of 2023 would go on to show that the Adjudicating Officer directed refund of Rs.92,92,294/- to the allottee within a period of 90 days from the date of the order alongwith interest @ 9.30% per annum from the date when the complainant asked for refund of payment till its realization. Costs of litigation to the tune of Rs.1,00,000/- were also imposed to be paid to the complainant.

4. Counsel for the petitioners has tried to convince us to enter into

the merits of the order on the ground that the Adjudicating Officer did not

have the jurisdiction to pass the order for refund and it was only the authority which would have the jurisdiction to pass an order of refund. The said argument is based on the basis of the relevant Rules and the judgment of the Apex Court in *M/s. Newtech Promoters and Developers Pvt. Ltd. vs. State of U.P. and others, 2022 (1) RCR (Civil) 357* which was decided on 11.11.2021.

5. After perusing the writ petitions, we are of the considered opinion that firstly the present writ petitions are not liable to be entertained solely on the ground that they are barred by the principle of delay and laches since almost a period of 2 years have passed by when the order was passed by the Adjudicating Authority. Apparently, remedy of appeal is permissible under Section 43 of the Act in question. As per Section 44 of the said Act, the period of limitation is 60 days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received by the aggrieved person. The proviso further provides that the Appellate Tribunal may entertain any appeal after the expiry of 60 days if it is satisfied that there was sufficient cause for not filling it within that period.

6. The averments made in Para No.56 of the writ petition are that the remedy of appeal has been rendered illusory and ineffective on account of the financial hardship of the petitioners in filing the statutory appeal which is apparently on account of the fact that there is the requirement of pre-deposit before the appeal can be entertained. It has accordingly been pleaded that there is financial hardship of the petitioners. The Apex Court has already adjudicated upon the said issue keeping in view the fact that the allottee's right is of paramount consideration while deciding question No.4 in *M/s.*

*Newtech Promoter's case (supra)*. The delay has also not been satisfactorily explained as to what was the reason as such. It is settled principle that the writ Court is to be approached at the earliest even if the order is stated to be void, as now argued. The petitioners thus, have various road blocks before them before we would entertain the present writ petition. The writ Court cannot be as such used to circumvent the procedure which is prescribed under the Statue which would provide remedy of appeal which is further limited to the extent that it would be only entertained if the pre-deposit is made under sub-Clause (5) of Section 43. Thus, entertaining the present writ petition would amount to condoning the delay beyond a period of 60 days and also without any sufficient cause as to why the appeal was not filed or why the writ petition was not preferred expeditiously immediately after the orders were passed by the Adjudicating Officer.

7.            The second issue would also be that the amount of refund which is to be safeguarded as has been held by the Apex Court in *M/s. Newtech Promoter's case (supra)* would be frustrated. The relevant observations read thus:-

*“136. It is indeed the right of appeal which is a creature of the statute, without a statutory provision, creating such a right the person aggrieved is not entitled to file the appeal. It is neither an absolute right not an ingredient of natural justice, the principles of which must be followed in all judicial and quasi-judicial litigations and it is always be circumscribed with the conditions of grant. At the given time, it is open for the legislature in its wisdom to enact a law that no appeal shall lie or it may lie on fulfilment of precondition, if any, against the order passed by the Authority in question.*

*137. In our considered view, the obligation cast upon the promoter of pre-deposit under Section 43(5) of the Act, being a class in itself, and the promoters who are in receipt of money which is being claimed by the home buyers/allottees for refund and determined in the first place by the competent authority, if legislature in its wisdom intended to ensure that money once determined by the authority be saved if appeal is to be preferred at the instance of the promoter after due compliance of pre-deposit as envisaged under Section 43(5) of the Act, in no circumstance can be said to be onerous as prayed for or in violation of Articles 14 or 19(1)(g) of the Constitution of India.”*

8. In such circumstances, we are of the considered opinion that there is no *bona fide* as such on the part of the petitioners since the writ petition was filed at a belated stage and, therefore, it is not for us to go into the merits of the case keeping in view the fact that there was an alternative and efficacious remedy also available which was also not availed of within a period of limitation. The purpose of the Act would be frustrated if we entertain the writ petition as the allottees are waiting for their refund eagerly in spite of fact that more than 2 years having been passed but still they have not got the fruits of the litigation.

9. In such circumstances, we do not find any ground to exercise our extra ordinary writ jurisdiction and the present writ petitions accordingly stand dismissed.

(G.S. SANDHAWALIA)  
JUDGE

12.09.2023  
shivani

(HARPREET KAUR JEEWAN)  
JUDGE

Whether reasoned/speaking  
Whether reportable

Yes  
No