BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate Regulation And Development Act 2016)

DATED 17.12.2021

Coram : Mr.Justice B.Rajendran, Chairperson
Mr.N.Balasubramanian, Judicial Member
Ms.Leena Nair, Administrative Member

Appeal No. 100 of 2021

M/s.Akshaya Pvt. Ltd.,
Rep. by its Director, Mr.J.Ravi ... Appellant

-Vs-

Mr.Ananth Prabakaran .... Respondent

This appeal was taken on file on 08.09.2021 and came up for final hearing on 08.12.2021 in the presence of M/s.Mani Sundargopal and Shree Aadya.S., Advocates for the appellant and M/s.R.Ramasubramaniam Raja, R.Hemavathi, D.Nancy Devadass, Arvind.A.S. and K. Vani Kala, Advocates for the respondent. Having heard the arguments of both sides through video conferencing and having stood over for consideration till this date and this Tribunal delivered the following:

ORDER

1. This appeal has been preferred by the promoter against the order of the Adjudicating Officer in S.R.No.290 of 2021 in Un Numbered I.A.No. / 2021 in C.C.P.No.137 of 2020 dated 17.08.2021 with regard to preliminary issue for the maintainability of the complaint. The appellant/promoter is the respondent and the homebuyer/respondent is the complainant in the original complaint before the Adjudicating Officer. For easy understanding and to avoid confusion the appellant and the respondents are referred in this appeal as per their original rankings as home buyer and promoter.

2. The home buyer preferred a complaint before the Adjudicating Officer for several reliefs including refund of the amount paid by the home buyer to the promoter towards sale consideration of the flat. During the pendency of the complaint the promoter preferred a petition to decide the preliminary issue regarding maintainability of the complaint before the Adjudicating Officer, that petition was not numbered and in S.R. stage that petition was decided by the Adjudicating Officer as complaint maintainable and dismissed the petition filed by the promoter. Aggrieved upon the same the promoter has preferred this appeal on the following main grounds:

- The appointment of an Adjudicating Officer by the Regulatory Authority under Section 71 is for the limited purpose of adjudicating compensation under sections 12, 14, 18 and 19 of the Real Estate (Regulation and Development) Act, 2016.

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- The right of an aggrieved allottee to seek refund would still remain, to be filed as a complaint before the authority.
- The word interest in Section 72 does not pertain to the interest mentioned in Section 18(1)(b), which is interest on the amount liable to be returned. The word interest in Section 72 pertains only to the interest in the proviso to clause 18(1)(b) i.e., interest for every month of delay and the interest mentioned in Section 19(7).
- Only in the event of the authority coming to the conclusion that there has been a violation of the provisions of the Act which entitles a complainant to withdraw from the project and seek refund. The issue of compensation can be adjudicated upon.

3. The learned counsel for the appellant/promoter further would submit that the learned Adjudicating Officer has not properly appreciated the citations referred on the side of the promoter in support of their contention namely Punjab Haryana High Court Judgment and Maharashtra Real Estate Appellate Tribunal order.

4. The learned counsel for the respondent/home buyer would submit that the word compensation includes refund/return of amount paid. In support of his argument the learned counsel has also relied Division Bench judgment of the Bombay High Court reported in 2020 SCC online Bombay 7272. Regarding Punjab Haryana High Judgment is concerned the learned counsel would submit that the operation of the order is stayed by the Hon'ble Supreme Court and the matter is

still pending before Supreme Court. Therefore reliance based on this judgment is immaterial. The learned counsel has also relied on judgments regarding interpretations of statues and concluded that the order of the learned Adjudicating Officer is according to law and pray for the dismissal of the appeal.

5. Point for consideration:

1. Whether the appeal deserves to be allowed or not?

Point:

6. According to the appellant/promoter complaint under Section 31 with regard to refund of the sale consideration due to the home buyer has to be adjudicated only by the authority and not by the Adjudicating Officer. The Adjudicating Officer has got jurisdiction only under Section 12, 14, 18 and 19 of The Real Estate (Regulation and Development) Act, 2016.

7. According to the respondent/home buyer complaint under Section 31 with regard to refund as well as compensation and interest can be dealt with by the Adjudicating Officer since the term compensation includes refund/return of amounts paid.

8. Both the appellant's and the respondent's counsels relied citations in support of their arguments. The learned Adjudicating Officer after contest came to a conclusion that the Adjudicating Officer has got jurisdiction to entertain the complaint for refund also. The learned Adjudicating Officer delivered the order on

17.08.2021. Now the Hon'ble Supreme Court of India on 11.11.2021 has laid down a law with regard to jurisdiction of the Adjudicating Officer regarding refund under the Real Estate (Regulation and Development) Act, 2016 in the following civil appeals:

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S). 6745 – 6749 OF 2021
(Arising out of SLP(Civil) No(s). 3711–3715 OF 2021)
M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD.
VERSUS STATE OF UP & ORS. ETC.

> ***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.***

9. In the above said verdict the Hon'ble Supreme Court has framed a specific question for consideration with regard to the powers of the Adjudicating Officer regarding refund in paragraph No.31 of the above said judgment which runs as follows:

31. After we have heard learned counsel for the parties at length, the following questions emerges for our consideration in the present batch of appeals are as under:–
1. .. ..
2. Whether the authority has jurisdiction to direct return/refund of the amount to the allottee under Sections 12, 14, 18 and 19 of the Act or the jurisdiction exclusively lies with the adjudicating officer under Section 71 of the Act?
3. .. ..
4. .. ..
5. .. ..

10. The law of the land declared that the power and jurisdiction to deal with the refund of sale consideration to the home buyer is only within the ambit of Regulatory Authority. The learned counsel for the respondent would submit that the verdict is not a conclusive one and some more appeals were pending before the Hon'ble Supreme Court for the same issue. By way of reply the learned counsel for the appellant would submit that the pending appeals before the Hon'ble Supreme Court with regard to some other dispute and not with regard to refund.

11. As on date, the law of the land, was declared by the Hon'ble Supreme Court that the Adjudicating Officer has no jurisdiction to deal with the refund under The Real Estate (Regulation and Development) Act, 2016. Till the further pronouncement of the Hon'ble Supreme Court the above verdict declared in Newtech case holds good. Hence, the arguments of the respondent/home buyer are not sustainable and the citations referred by both sides not relevant at this moment since the Hon'ble Supreme Court has specifically decided the jurisdiction of the Regulatory Authority and Adjudicating Officer by framing specific issue

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regarding jurisdiction. Hence this Tribunal necessarily has to follow the verdict of the Hon'ble Supreme Court. Therefore this Tribunal comes to a conclusion that this appeal is deserves to be allowed in part by following the Hon'ble Supreme Court verdict. The point is answered accordingly.

12. In the result, this appeal is allowed in part without costs and the order of the Adjudicating Officer in S.R.No.290 of 2021 in Un Numbered I.A.No. of 2021 in C.C.P.No.137/2020 dated 17.08.2021 is set aside and the complaint is maintainable before the Regulatory Authority and regarding another relief petition is dismissed and this Tribunal issued the following directions as per the judgment of the Hon'ble Supreme Court dated 11.11.2021 in Newtech Promoters and Developers Pvt. Ltd. Vs. The State of Uttar Pradesh and others:

a) The Adjudicating Officer is directed to return the complaint to the Regulatory Authority to decide the issue of refund, interest for refund, etc.,

b) The Regulatory Authority is directed to take the complaint on file and after giving sufficient opportunity to both sides decide the issue regarding refund and interest thereon etc., on merits as per the Real Estate (Regulation and Development) Act, 2016 and pass orders in accordance with law.

Connected Miscellaneous applications are closed.

This Order is directly dictated to the Stenographer and typed in the computer by her, corrected and pronounced by us in the open court on 17th Day of December 2021.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

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