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IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Memo No. REAT/2021/406

Appeal No. 260 of 2020

MEMO OF PARTIES

BETWEEN

PAUL INDER SUKHIJA resident of 203, Tower No.9, Orchard County, Sector 115, Kharar Landran Road, Mohali, District Sahibjada Ajit Singh Nagar, Mohali, Punjab through his GPA and father Shri Rajinder Singh Sukhija son of Sh.Avtar Singh Sukhija, resident of # 203, Tower No.9, Orchard County, Sector 115, Kharar Landran Road, SAS Nagar, Mohali, now resident of Flat No.1380, Silverton Society, Sector 48-B, Chandigarh.

.... Appellant


Versus

Ansal Lotus Melange Projects Pvt. Ltd SCO 183-184, Sector 9-C, Chandigarh, now office at City Centre CB-12/A, Kharar Landran Road, Sector 115, SAS Nagar, Mohali.

...Respondent

Chandigarh
10.11.2020




(**MOHIT JAGGI**)
Advocate
Counsel for the appellant.

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

APPEAL NO. 260 OF 2020

PAUL INDER SUKHIJA

VERSUS

M/S ANSAL LOTUS MELANGE PROJECTS PVT. LTD

Present: - Mr. Mohit Jaggi, Advocate for the appellant.

This is an appeal directed against the order dated 09.07.2020, passed by the Adjudicating Officer, Real Estate Regulatory Authority, Punjab.

Learned counsel for the appellant at the outset places reliance on the recent judgment of the Hon'ble Supreme Court in "M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC." and refers to Para 83 and 86, to contend that the Adjudicating Officer would have no jurisdiction to entertain and decide issues relating to refund and interest, even though he is specifically empowered under the Act to deal with the issues of compensation, which has also been approvingly observed by the Hon'ble Supreme Court in "M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC." He thus prays that in view of the authoritative pronouncement of the Hon'ble Supreme Court, the impugned orders need to be set aside.

We have heard learned counsel for the appellant.

The Hon'ble Supreme Court of India has held in "M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT.



LTD. VERSUS STATE OF UP & ORS.ETC. ", Para No. 83 & 86

as below.

"83. So far as the single complaint is filed seeking a combination of reliefs, it is suffice to say, that after the rules have been framed, the aggrieved person has to file complaint in a separate format. If there is a violation of the provisions of Sections 12, 14, 18 and 19, the person aggrieved has to file a complaint as per form (M) or for compensation under form (N) as referred to under Rules 33(1) and 34(1) of the Rules. The procedure for inquiry is different in both the set of adjudication and as observed, there is no room for any inconsistency and the power of adjudication being delineated, still if composite application is filed, can be segregated at the appropriate stage.

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



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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."

In the instant case the Adjudicating Officer decided the prayer for refund and interest as also the compensation, which to our minds is contrary to the observations made by the Hon'ble Supreme Court in this regard as noticed above.

Having regard to the above, we deem it appropriate to dispose of the appeals with a liberty to the complainants to move an appropriate application in Form M seeking refund & interest and Form N seeking compensation before the competent Authority/Adjudicating Officer.

In case, such applications are moved, the same shall be decided expeditiously by the Competent Authority/Adjudicating Officer as the case may be in accordance with law.

We are of the opinion, that in order to ensure expeditious disposal of the matter, the parties should put in



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appearance before the Authority/Adjudicating Officer as the case may be. Which in turn shall pass appropriate orders either for allocating the proceedings to the appropriate Authority/Adjudicating Officer or for return of the complaint with a permission to the complainant to file appropriate proceedings in Form-M or Form-N as the case may be. The Authority in this manner would have the benefit of providing a time-frame for the entire process as both the parties would be before it and the necessity of affecting service etc. may not arise. The Authority/Adjudicating Officer shall then proceed to determine the matter in accordance with law.

Parties are directed to appear before the Real Estate Regulatory Authority on 21.12.2021.

Sd/-

JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

Sd/-

S.K. GARG, D & S. JUDGE (RETD.)
MEMBER (JUDICIAL)

Sd/-

ER. ASHOK KUMAR GARG, C.E. (RETD.)
MEMBER (ADMINISTRATIVE/ TECHNICAL)

November 30, 2021

AN



Certified To Be True Copy

Shamsher Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh 20-12-2021