

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
I.A. No. 205 of 2021 in CCP No. 95 of 2021**

M/s. Akshaya Private Limited
Rep by its Director, J.Ravi

..... Petitioner/Respondent

Vs.

1. V.Bhuvana
2. T.Mohan

..... Respondent/Complainant

Petitioner/Respondent : Rep. by Mr. Mani Sundar Gopal, Advocate
Respondent/Complainant : Rep. by Mr. Ajay Kumar Gupta, Advocate

Heard and Delivered on : 28.12.2021

ORDER

The petition by the above petitioner/respondent is filed under Section 71 of the RERA Act 2016 seeking to dismiss the complaint in limine as not maintainable.

2. Averments of the petitioner/respondent, in brief, as follows :-

(a) The respondent/complainant preferred the present complaint under Section 31 read with Section 71 of the RERA Act 2016 seeking the reliefs of refund of a sum of Rs.32,48,899/- paid to the petitioner/respondent towards purchase of apartment with interest and compensation.

(b) The issue of refund has to be decided only by the Regulatory Authority and not by the Forum of the Adjudicating Officer. Such a view was taken by the Hon'ble Maharashtra Real Estate Appellate Tribunal and also the Division Bench of the Hon'ble Punjab and Haryana High Court. This petitioner/respondent also raised the contention regarding the maintainability of the complaint on the basis of the above decisions in the counter filed by the petitioner/respondent in the main complaint.

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(c) Under section 37 and 38 of the Act, the regulatory authority has the power to issue directions to refund the amount on such conditions as it may deem proper in the facts and circumstances of each case. Therefore, the justification of the complainant for withdrawal from the project and subsequently claiming refund has to be decided by the authority. Hence the claim of refund before the Forum of Adjudicating Officer is not maintainable in law of facts. Hence the issue of maintainability to be taken up as a preliminary issue and to dismiss the complaint is not maintainable.

3. Counter averments of the respondent/complainant, in brief, as follows:

(a) It is not in dispute that the apartment unit has not been completed by the petitioner/respondent/promoter in accordance with the terms of the agreement and therefore, it is the obligation of the promoter to return the amount received with interest including compensation in terms of section 18(1) of the RERA Act. The section requires letter of demand of the money from the respective buyer for return the amounts by the promoter. To this extent none of the ratios sought to be applied by the petitioner/respondent are applicable. The decision of the Hon'ble Supreme Court in the case of M/s.Newtech Promoters and Developers (P) Ltd.Vs State of UP and others also reinforce this position of law. The scope of section 71 of the Act wrongly construed and limited as if the Adjudicating Officer is only empowered to adjudicate compensation arising under Section 12,14,18 and 19 of the RERA Act. From the plain reading of the section 71, it is clear that there is no bar on the Adjudicating Officer to sanction refund in terms of section 18(1) and section 19(4) of the RERA Act in case of a composite application/complaint on refund/return and compensation, penalty and interest. Section 18 deals with the combined action of return of amount and compensation and states that

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compensation in terms of section 71 can only be adjudged if there is no dispute on the return of the amount. In the cases, relied by the petitioner, there is no instance where the complaint has been rejected for want of jurisdiction. In the present case, even transfer of the complaint to the RERA Authority does not serve any purpose as the Adjudicating Officer only has the exclusive power on compensation.

(b) It is not the intent of the law to seek return of the money and compensation separately after confirmation of the return of the money by the Authority. The complainant is not required to file two separate complaints one for the return, refund and interest and one for compensation alone. When there is a combined prayer for refund and compensation arising out of refund as per section 18(1) and section 19(4) of the RERA Act, there is no bar in the law that the same cannot be dealt together by the Adjudicating Officer. Under section 40 of the RERA Act, the process of recovery of interest or penalty or compensation is envisaged. There is no mention of any refund and return of money. The Hon'ble Supreme Court in the M/s.Newtech judgement made it clear that the amount which has been determined as refundable to the allottees/home buyers either by the Authority or by the Adjudicating Officer in terms of the order is recoverable within the ambit of section 40(1) of the RERA Act. In all the taxation statutes there is one proper officer for recovery of tax and refund of duty or tax. The Adjudicating Officer should be the proper officer as the RERA Authority is not empowered to adjudge compensation. The entire complaint can be decided by the Adjudicating Officer and there is no legal bar on the same. Therefore the complaint is not maintainable and is to be decided in accordance with the provisions of the RERA Act.

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4. The point for consideration in the petition is:-

Whether the petition under Section 71 of the RERA Act 2016 is maintainable?

5. Answer for the Point:-

(a) The learned counsel for the petitioner/respondent submitted that the appointment of the Adjudicating Officer is only for the limited purpose of adjudging compensation under sections 12,14,18 and 19 of the RERA Act and neither under section 71 nor under section 72, the Adjudicating Officer is empowered to direct refund of the amount collected from the respondent/appellant with interest and the relief for compensation is not maintainable under section 71 of the Act and the Adjudicating Officer is competent to decide compensation only, whereas the jurisdiction to decide all other issues except compensation under RERA is vested with the Authority and the complaints seeking multiple reliefs including compensation are required to be dealt by the Authority and not the Adjudicating Officer.

(b) The learned counsel also relied on the decision of the Hon'ble Tamil Nadu Real Estate Appellate Tribunal in Appeal No.100/2021 dated 17.12.2021, wherein the Hon'ble Appellate Tribunal relied on the decision of the Hon'ble Supreme Court *M/s.Newtech Promoters and Developers Pvt.Ltd. vs State of UP & Ors, etc. reported in 2021 SCC Online 1044*, and held that the Hon'ble Supreme Court was pleased to observe that when it comes to refund of the amount and interest on the refund of amount, or directing payment of interest for delayed delivery of possession or penalty and the interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint and a law of the land declared that the power and jurisdiction to deal with the refund of sale consideration to the home buyers is

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only within the ambit of the Regulatory Authority and the Adjudicating Officer has no jurisdiction to deal with the refund under the RERA Act.

(c) However, the learned counsel for the respondent/complainant contended that Section 18 of the Act deals with the combined action of return of amount and compensation, and the compensation in terms of section 71 can only be adjudged if there is no dispute on the return of the amount and in the decision of the Supreme Court in M/s.Newtech Promoters and Developers judgement, the complaint was filed before the RERA Authority and not before the Adjudicating Officer.

(d) In the decision of the Hon'ble Appellate Tribunal referred above, the Hon'ble Appellate Tribunal has held that as on date, the law of the land was declared by the Hon'ble Supreme Court is that the Adjudicating Officer has no jurisdiction with the refund under the RERA Act and the verdict declared in M/s. Newtech case holds good. Subsequent to the decision of the Hon'ble Supreme Court referred above, the Chairperson of the TNRERA by proceeding No. TNRERA/A1/8189/2021 dated 17.12.2021, passed an order to that effect that, "in view of the orders of the Hon'ble Supreme Court of India, the Authority has to adjudge the refund claims" and ordered to transfer the pending complaints on refund before the Adjudicating Officer to the Bench of Single Member of the Authority".

(e) In the above circumstance, there is no necessity to decide on the maintainability of the complaint by this Forum. Therefore the petition deserves to be closed. Thus the point is answered accordingly.

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In the result, the petition is closed in view of the transfer order of the Hon'ble Chairperson of TNEREA..

Sd/- 28.12.2021
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

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[Handwritten Signature]
28.12.2021
LAW OFFICER
TNERERA, CHENNAI