

**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 25.02.2022

**Coram : Mr.Justice B.Rajendran, Chairperson
Ms.Leena Nair, Administrative Member**

A.No. 02/2022

M/s. Mahindra Residential Developers Limited
Rep. by its Authorised Signatory
R.Eswaran

... Appellant

-Vs-

R.Arun Prasad

... Respondent

This Appeal has been preferred against the order of Adjudicating Officer in C.C.P.No.165/2021 dated 30.11.2021. This Appeal was taken on file on 12.01.2022 and came up for final hearing on 25.2.2022 in the presence of M/s. Srinath Sridevan, T.K.Bhaskar, K.Harishankar, Aishwarya S Nathan, K.Swetha and K.P.Uddish, Counsels for the appellant and M/s.N.S. Sivakumar and

K.Kishore Kumar, Counsels for the respondent. Having heard the arguments of both sides through video conferencing and this Tribunal delivered the following:

ORDER

1. The home buyer came forward with the complaint before the Adjudicating Officer for the relief of refund of amount paid towards sale consideration with interest along with compensation and litigation costs. After contest the Adjudicating Officer directed the promoter to refund Rs.7,39,028/- along with interest at the rate of 9.30% and awarded compensation of Rs.50,000/- along with litigation costs Rs.25,000/-. Aggrieved upon the same the promoter preferred this appeal mainly on the ground of questioning the jurisdiction of the Adjudicating Officer and complied the direction under section 43(5) by depositing the total amount ordered by the Adjudicating Officer. After admission of the appeal came up for final hearing on 25.2.2022 and after hearing both sides this Tribunal passed the following order:

"Appellant counsel present. The respondent has appeared through Advocate Thiru.N.S.Sivakumar, files vakalat. The appeal arises for a short point. The only point which has been raised by the learned counsel for the appellant is after the judgment of the Hon'ble Supreme Court dated 11.11.2021 in M/s. Newtech promoters and developers pvt. Ltd. Vs. State of UP & Ors. etc., the Adjudicating Officer has no power to pass the order on the question of refund. In this regard, the present order was passed by the Adjudicating Officer on 30.11.2021 which was much after the Supreme Court judgment. Therefore per-se the order passed by the Adjudicating Officer is illegal, non-est in the eye of law. In that view of the matter, he would only contend that the order has got to be set aside. He would also point out that as per the direction of

this Tribunal he has deposited the entire amount as ordered by the court below. In view of the Supreme Court judgment in as much as the order itself is nullity, the deposit made by him should be directed to be refunded in the event of the order being set aside.

The learned counsel for the respondent though would fairly agree that the Adjudicating Officer has no authority to pass order regarding the refund, he would only contend that the matter may be remitted back to the concerned authority for final disposal. At the same time to keep all the money deposited by the appellant intact to safeguard the money paid by respondent. Heard both the parties through video conferencing and final orders are passed herein:

As rightly pointed out by the learned counsel for the appellant, pursuant to the passing of the order of the Supreme Court dated 11.11.2021, in M/s. Newtech promoters and developers pvt. Ltd. Vs. State of UP & Ors. etc., the Adjudicating officer has no power to pass any orders on the question of refund. In this case, the case itself was heard only after 11.11.2021 namely 12.11.2021 and the orders have been passed on 30.11.2021. On this point itself the order has got to be set aside as it is a nullity and has no force of law as it is passed without authority.

As per the direction of this Tribunal and as pursuant to the Supreme Court order entire amount was deposited as ordered by the court below by the appellant viz., compensation amount, litigation costs, refund of booking advance, interest on booking amount Rs.7,39,028/- which comes to Rs.3,22,806/- and total amount deposited is Rs.11,36,834/-.

The only argument for the learned counsel for the appellant is if at all the money has to be safe guarded it can only be the money paid by the complainant viz., sum of Rs.7,39,028/-, especially as he is taking the plea that the RERA Act itself is not applicable and when that question can be raised before appropriate authority he should not be burdened with to continue keeping the deposit amount. He would contend that if at all he has to be safeguard it is only the amount paid by the buyer he cannot be asked to keep the amount as regards interest, compensation amount and litigation expenses when the decree itself is being set aside and a new Trial has to begin. This Tribunal feels that the argument is reasonable. What is to be safeguarded is Rs.7,39,028/- paid by the buyer. In view of the same this court only gives direction that even though the order is set aside the matter is remitted back to the competent authority before RERA to

deal with the matter afresh and also the defenses could be raised before the RERA it is subject to the condition that an amount of Rs.7,39,028/- only from the deposited amount before the Tribunal will be kept in the bank deposit till the disposal of the C.C.P.No.165 of 2021.

This Tribunal further directs both the parties to appear before the competent authority in the RERA on 31.3.2022. No costs.

The appellant is also permitted to withdraw the balance amount deposited by him after filing necessary cheque application for which the respondent has no objection.

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 25th Day of February 2022.

**Sd/- xxxx
CHAIRPERSON**

**Sd/- xxxx
ADMN. MEMBER**