

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

APPEAL-19/2021

ELDECO INFRASTRUCTURE AND PROPERTIES LTD.

.....Appellant

Versus

ARGHYA KUMAR DHALI

.....Respondent

Counsel for Appellant

Counsel for Respondent

SAURABH MISRA

VINAY K LAKHANI

Hon'ble Mr. Justice Suneet Kumar, Chairman

Hon'ble Mr. Sanjai Khare, Judicial Member

Hon'ble Mr. Rameshwar Singh, Administrative Member

1. Case called in the revised call.
2. No one appears on behalf of respondent.
3. Heard Sri Saurabh Mishra, Advocate, appears on behalf of appellant.
4. Learned counsel for the appellant submits that the respondent allottee has not withdrawn from the project, therefore, in terms of Section 18 of Real Estate (Regulation & Development) Act, 2016 (Act 2016) is entitled to delay interest on deposits, however, instead of proceeding before learned Regulatory Authority for delay interest, the respondent allottee filed his complaint before the Adjudicating Officer (AO). The AO has granted delay interest which is beyond its inherent jurisdiction as has been held by Hon'ble Supreme Court in **M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors**, reported in **2021 SCC Online SC 1044 & [2021 (11) ADJ 280]**. Para 86 of **Ms Newtech Promoters (supra)** reads as under:

“ 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”.

5. The only question that arises to be decided in this appeal is as to whether the AO would have jurisdiction on the subject matter.
6. We have perused the impugned order/judgement dated 10.01.2020, passed by AO in complaint No. **ADJ/NCR144/10/0665/2019/2019** (Arghya Kumar Dhali Vs. M/s Eldeco Infrastructure and Properties Limited) with the assistance of learned counsel for the appellant. The respondent allottee had booked 2BHK + Study unit No. IN2/2304, 23rd Floor, admeasuring 1245 Sq.ft in **Eldeco Aamantran (Insprie & Edge)** project of the appellant. Admittedly, the project was delayed. Aggrieved, respondent allottee approached AO claiming delayed interest which was duly allowed. As per decision of Hon’ble Supreme Court in **M/s Newtech Promoters (supra)**, AO lacks jurisdiction on the subject matter. Accordingly, impugned order/judgement, passed by the AO in aforementioned complaint cannot be sustained in eye of law for want of jurisdiction, thus, rendering the order is a nullity in the eye of law.
7. Therefore, impugned order/judgement dated 10.01.2020 arising of complaint No. **ADJ/NCR144/10/0665/2019/2019** (Arghya Kumar Dhali Vs. M/s Eldeco Infrastructure and Properties Limited) is **set aside** and **quashed**. The appeal is **allowed**.
8. However, an opportunity is granted to the respondent allottee to take remedy by filing complaint before learned Regulatory Authority in accordance with law, if so advised.
9. In the event, the complaint is filed by the allottee within six weeks from the date of uploading of this order on web portal, in that event, it is expected that Regulatory Authority shall decide the complaint on merit expeditiously, preferably within four months, provided there is no other impediment.
10. We also accept the request of the learned counsel for the appellant for release of the amount deposited by the appellant promoter in compliance of Section 43 (5) of the Act 2016.
 - 10.1 The promoter applicant will present an application before the Registrar of this Tribunal indicating the proof of deposit and giving the details of

bank account including IFSC Code in which he/she wants the amount to be transferred through RTGS.

- 10.2 The Registrar after verifying the amount from the Account Department/Bank will release the same in the bank account of the applicant, indicated by the applicant in the application and if the amount deposited by applicant promoter towards compliance of Section 43 (5) of the Act 2016, has been converted into fixed deposit, in view of an administrative decision taken in the month of June 2023, we direct the Registrar to take steps for encashment of the said fixed deposit and release the same through RTGS in bank account of the applicant expeditiously along with interest accrued on the said fixed deposit.
11. It will be the liability of the beneficiary to pay the income tax on the interest accrued on the deposited amount, if any.

(Rameshwar Singh)

(Sanjai Khare)

(Suneet Kumar)

Dated: 19.11.2024
MANSINGH