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**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

APPEAL NO. AT006000000053108

M/s R.S. Enterprises]
Through its Proprietor Mr Suresh]
R. Venkvani,]
208, Second floor, Shiv Centre,]
Sector-17, Opp.Federal Bank,]
Navi Mumbai, Maharashtra]
400 703.]

.. Appellant

-vs-

(1) Mr. Rajesh Kumar Singh]
(2) Mrs. Seema Rajesh Kumar]
Singh,]
Quarter No.48, Type-III, Building]
No.5, Ekta Vihar , CGS Colony,]
Sector-25, CBD, Belapur, Navi]
Mumbai-400 416.]

... Respondents

Mr. Anwar Landge, Advocate i/b Mr. Harshad Bhadbhade, Advocate for Appellant.

Mr. Rajesh Kumar Singh/Respondent No.1 in person for himself and for respondent No.2.

**CORAM : INDIRA JAIN J., CHAIRPERSON &
DR. K. SHIVAJI, MEMBER (A)**

DATE : 13th January, 2022.

(THROUGH VIDEO CONFERENCE)

ORDER: [PER INDIRA JAIN, J.]



This appeal by promoter takes an exception to the order dated

4th February 2021 passed by learned Adjudicating Officer in complaint No.CC006000000089695 thereby directing the promoter to pay interest on Rs.40.86 lakhs at the rate of 10.40% per annum from 01.04.2018 till 27.02.2020 within 30 days from the date of order. In addition costs of Rs.20,000/- as costs in complaint was also saddled on promoter.

2] For the sake of convenience we would refer the parties in their original status as complainants and promoter as referred before Adjudicating Officer.

FACTUAL MATRIX

3] (i) Complainants filed complaint seeking directions to promoter from MahaRERA to hand over possession of Flat No.403, 4th floor of project Vankvani Ela in Sector 18, Ulwe, Taluka Panvel, District Raigad and also to pay interest for delayed possession under Section 18 of The Real Estate (Regulation and Development) Act 2016 (Referred as "the Act" for short). Complainants also prayed for refund of additional amount paid to promoter along with interest towards less area provided to them. Vide order dated 15th January 2020, learned Member of the Authority transferred the complaint to Adjudicating Officer on the ground that complainants are seeking compensation in addition to other reliefs.

(ii) Promoter appeared before learned Adjudicating Officer and resisted the complaint. In reply promoter contended that delay in possession occurred due to force majeure and therefore promoter is not liable to pay interest and compensation claimed by complainants. Regarding grievance in respect of less carpet area, submission of promoter is that carpet area is as per the agreement and the relief sought does not sustain in view of terms of agreement entered into between the

parties. Promoter therefore urged to dismiss the complaint.

(iii) Upon hearing the parties learned Adjudicating Officer framed points for determination in paragraph 5 of the impugned order. For ready reference the said points are reproduced here as follows –

<u>POINTS</u>	<u>FINDINGS</u>
1) Are the complainants allottees and respondent Promoter ?	Affirmative
2) If yes, has the respondents failed to deliver Possession as per agreement, without there being circumstances beyond his control ?	Affirmative
3) Are there defects and deficiencies in the Flat to be allotted to complainants ?	Negative
4) At the complainants entitled to the reliefs claimed ?	Affirmative
5) What Order ?	As per final order.

(iv) Consequently learned Adjudicating Officer awarded interest for delayed possession and costs to the complainants vide order dated 4th February 2021. Being aggrieved promoter has preferred present appeal.

4] During pendency of appeal promoter filed written submissions and raised preliminary objection to the jurisdiction of Adjudicating Officer to decide complaint under the Act of 2016. Appellant placed reliance on the recent judgment of the Hon'ble Supreme Court dated 11th November 2021 in **M/s Newtech Promoters And Developers Pvt. Ltd Vs. State of UP & Ors. [Civil Appeal Nos.6745-6749 of 2021]** to submit that appointment of an Adjudicating Officer under Section 71 is for the limited

purpose of adjudicating compensation under Sections 12, 14, 18 and 19 of the Act. It is contended that complaint under Section 31 with regard to reliefs other than compensation ought to have been heard and decided by the Authority and not by Adjudicating Officer.

5] Referring to paragraphs 83 and 86 of the Judgment in **M/s Newtech Promoters And Developers Pvt. Ltd (supra)**, appellant urged to set aside impugned order passed by the forum having no jurisdiction.

6] Heard learned counsel for parties. Perused record.

7] A simple point that arises for our determination is whether the impugned order dated 4th February 2021 passed by learned Adjudicating Officer, MahaRERA is sustainable in law to this our finding is in the negative for the reasons to follow –

REASONS

8] The issue on jurisdiction of Authority and Adjudicating Officer is put to rest in paragraphs 83 and 86 of the judgment of the Hon'ble Supreme Court in **M/s Newtech Promoters and Developers Pvt. Ltd and State of Uttar Pradesh in Civil Appeal No.(S) 6745 - 6749 of 2021 dated 11th November 2021**. The Hon'ble Supreme Court has held that when it comes to a question of seeking relief of adjudging compensation and interest thereon, under Sections 12, 14, 18 and 19 Adjudicating Officer exclusively has power to determine keeping in view col-

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lective reading of Sections 71 read with 72 of RERA. On powers of Authority, the Hon'ble Supreme Court held that if the Adjudication is under Sections 12, 14, 18 and 19 other than compensation as envisaged, it is Regulatory Authority which has power to examine and determine the outcome of complaint.

9] Paragraphs 83 and 86 of the judgment in Newtech Promoters (supra) are reproduced here as follows for ready reference –

“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.

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86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication