

**BEFORE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL MUMBAI**

15] APPEAL NO. AT006000000031745/23

M/s. Solitaire Palms & Anr.

... Appellants

V/s.

Mr. Sandeep V. Jadhav

...Respondent

Adv. Amit Patil for Appellants.

Adv. Amit Lanke for Respondent.

CORAM : SHRI SHRIRAM. R. JAGTAP, MEMBER (J), &

DR. K. SHIVAJI, MEMBER (A)

DATE : 28th November, 2023

(THROUGH VIDEO CONFERENCE)

Adv. Amit Lanke submits that the respondent has filed reply and served the copy of the same to other side.

2] Learned Adv. Amil Patil has invited our attention to the impugned order and poignantly submitted that the impugned order is passed by Adjudicating Officer, who has no competence to pass such order and the impugned order in any way does not sustain in the eyes of law. He further submits that the impugned order therefore is required to be set aside and matter be remanded to the learned Authority for deciding afresh.

3] We have heard learned counsel for respective parties. Learned counsel are fair enough to submit that the Adjudicating Officer, who has passed the impugned order, has no jurisdiction to adjudicate the matter in issue and despite this Adjudicating Officer has disposed of the complaint. Learned counsel have further submitted that the impugned order dated 28th June 2019 be set aside and complaint be remanded to the Authority to be decided afresh on merits

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by keeping open all contentions of the parties.

4] We have given thoughtful consideration to the submissions advanced by learned counsel appearing for respective parties. On careful examination of impugned order reveals that the complainant/allottee has sought refund of amount on account of delayed possession. It is well settled principle of law that Adjudicating Officer has limited jurisdiction under Sections 71 and 72 of RERA to adjudge compensation under Sections 12, 14, 18 and 19 of RERA. The Adjudicating Officer cannot adjudicate claim relating to interest for delayed possession, refund of amount, for other violations of the provisions of RERA as these areas squarely fall within the purview of the Authority constituted under the RERA. The Adjudicating Officer has no competence to entertain, hear and decide the complaint as the allottee in his complaint sought relief of refund of amount together with interest. The Adjudicating Officer has inherent lack of jurisdiction to hear and decide the said complaint.

5] In the case of **M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. & Others** [2021 SCC online 1044], the Hon'ble Apex Court has clarified issue of jurisdiction i.e. the jurisdiction of the Adjudicating Officer under the RERA Act. The issue of jurisdiction of Authority and Adjudicating Officer is put to rest in paragraphs 83 and 86 of the said judgment.

6] Therefore, it is crystal clear that Adjudicating Officer was not having jurisdiction to grant reliefs sought in the complaint. Accordingly, the impugned order cannot be sustained and calls for interference in the appeal. We are of the view that it would be appropriate that instead of Tribunal examining the ground of admissibility of refund of amount with interest due to delay in

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possession for the first time in the instant appeal, the same is required to be considered by the Authority. Therefore, the complaint is required to be remanded to the Authority to be considered afresh in the terms of relief sought therein. Consequently, we proceed to pass following order.

ORDER

1. Appeal no. AT006000000031745 of 2023 is partly allowed.
2. Impugned order dated 28th June 2019 passed by Adjudicating Officer in complaint is set aside.
3. Complaint no. CC005000000022087 is remanded to the learned Authority to be considered and decided afresh as expeditiously as possible in accordance with law.
4. All rights and contentions of the parties are kept open.
5. Parties shall bear their own cost.
6. Parties shall appear before the learned Authority on 2nd January 2024.
7. Complaint is quite old one therefore, the learned Authority is requested to expedite the complaint and disposed of the same as early as possible.
8. Copy of this order be communicated to the parties and MahaRERA as per provisions of Section 44(4) of RERA 2016.


(DR. K. SHIVAJI)

Ajit


(SHRIRAM. R. JAGTAP)