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WP-20298-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ON THE 7th OF JULY, 2026WRIT PETITION No. 20298 of 2025

*M/S JETAL CONSTRUCTION PRIVATE LIMITED THROUGH ITS
CHIEF EXECUTIVE OFFICER VIRENDRA GUPTA*

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Shri Rajmani Bansal - Advocate for the petitioner.

Shri Sohit Mishra - Govt. Advocate for the respondent/State.

Shri Rohit Jagwani - Advocate for the respondent [R-3].

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ORDER

The present petition under Article 226 of the Constitution of India has been preferred by the petitioner assailing the order dated 10.01.2019 passed by the learned Adjudicating Officer in Case No. N-Gwl-17-0237, whereby the learned authority has directed the petitioner to refund an amount of Rs. 45,00,000/- along with interest @ 10% per annum to respondent No. 3, on an application preferred by respondent No. 3 under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act of 2016").

The impugned order has been passed on the premise that the petitioner had failed to deliver peaceful possession of the flats in question to respondent No. 3. Pursuant thereto, a Recovery Certificate (RRC) has been issued by respondent No. 2 for enforcement and execution of the



order passed by the learned Adjudicating Officer.

The short facts of the case are that the petitioner had entered into an agreement with respondent No. 3 in respect of Flats No. B/801 and B/802. It is relevant to mention that respondent No. 3 had availed two separate loan facilities from HDFC Bank, Gwalior, amounting to a total sum of Rs. 47,00,000/- for purchase of the aforesaid flats. However, respondent No. 3 failed to adhere to the repayment schedule and defaulted in payment of the monthly instalments, resulting in classification of the loan account as a Non-Performing Asset (NPA) by HDFC Bank. Consequently, HDFC Bank initiated proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and has already taken possession of the said flats. The physical possession of the flats has remained with HDFC Bank since the year 2019. The petitioner had also approached the learned Consumer Forum by filing Consumer Case No. CC-240/2017 on the same cause of action. However, the said complaint was dismissed by the learned Consumer Forum. Subsequently, respondent No. 3 preferred an application under Section 31 of the Act of 2016 seeking refund of the deposited amount along with interest. On the basis of the said application, the learned Adjudicating Officer proceeded to pass the impugned order directing refund of the amount along with interest. After passing of the impugned order, respondent No. 2 issued a Recovery Recovery Certificate (RRC), pursuant to which the Competent Authority has initiated proceedings for recovery of the amount directed under the impugned order. Being aggrieved and dissatisfied with the order



dated 10.01.2019 passed by the learned Adjudicating Officer, as well as the consequential recovery proceedings initiated pursuant thereto, the petitioner has approached this Court by way of the present writ petition.

The solitary ground raised by learned counsel for the petitioner is that the impugned order has been passed by the Adjudicating Officer, who is competent only to adjudicate claims relating to compensation and not to direct refund of the amount. It is, therefore, contended that the impugned order is without jurisdiction and is liable to be set aside. In support of the aforesaid submission, learned counsel has placed reliance upon the judgment of the Hon'ble Supreme Court in *Civil Appeal Nos. 6745–6749 of 2021, M/s. Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh & Others*, decided on 11.11.2021, particularly paragraph 86 thereof.

Per contra, learned counsel appearing for respondent No.3 has refuted the aforesaid submissions by placing reliance upon the order dated 04.09.2018 passed by the Regulatory Authority. It is submitted that by the said order, the Regulatory Authority had recorded a categorical finding that the petitioner had unnecessarily delayed completion of construction of both the flats allotted to respondent No.3 and even as on the date of passing of the said order, the construction work remained incomplete. The Authority further observed that the petitioner had neither issued any written communication nor served any notice upon respondent No.3 intimating completion of construction of the flats. It was also noticed that the petitioner was unwilling to specify any definite timeline for completion of the construction work.



It has further been submitted that despite due service of notice, the petitioner failed to appear before the Regulatory Authority and neither controverted the allegations levelled by respondent No.3 nor rebutted the documents placed on record in support thereof. Consequently, on the basis of the unrebutted documentary evidence adduced by respondent No.3, the Regulatory Authority arrived at the conclusion that owing to the failure of the petitioner to complete construction of the flats within a reasonable period, respondent No.3 was justified in withdrawing from the project and had sufficient and valid grounds for exiting therefrom. Accordingly, the Regulatory Authority held respondent No.3 entitled to refund of the entire amount deposited with the petitioner together with interest and compensation, while leaving the determination of the rate of interest and quantification of compensation to the Adjudicating Officer.

Heard counsel for the parties and perused the record.

A perusal of the record reveals that the principal contention advanced by learned counsel for the petitioner pertains to the competence and jurisdiction of the learned Adjudicating Officer to pass the impugned order directing refund of the amount along with interest. The submission is founded upon the law laid down by the Hon'ble Supreme Court in *M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of Uttar Pradesh and Others* (supra), wherein the scope and ambit of the powers exercisable by the Regulatory Authority and the Adjudicating Officer under the Act of 2016 have been authoritatively delineated.

The Hon'ble Apex Court, in paragraph 86 of the aforesaid judgment,



has categorically held that a conjoint reading of Sections 18 and 19 of the Act of 2016 makes it abundantly clear that insofar as refund of the amount, interest on the refunded amount, payment of interest for delayed delivery of possession, penalty and interest thereon are concerned, the Regulatory Authority alone is vested with the jurisdiction to entertain and determine such claims. The jurisdiction of the Adjudicating Officer under Sections 71 read with 72 of the Act is confined to adjudging compensation under Sections 12, 14, 18 and 19 of the Act. The Hon'ble Supreme Court has further observed that extending the jurisdiction of the Adjudicating Officer beyond adjudication of compensation would amount to enlarging the statutory powers conferred under Section 71, which would be contrary to the legislative mandate.

Section 71 of the Act of 2016 also makes it evident that the Adjudicating Officer has been appointed only for the limited purpose of adjudging compensation under Sections 12, 14, 18 and 19 of the Act. Likewise, Section 40 of the Act merely provides for recovery of interest, penalty or compensation and for enforcement of orders passed by the Adjudicating Officer, the Regulatory Authority or the Appellate Tribunal within the sphere of their respective statutory powers. The said provision does not confer any additional substantive jurisdiction upon the Adjudicating Officer to determine issues beyond those expressly entrusted under Section 71 of the Act.

In the present case, however, learned counsel appearing for respondent No.3 has invited the attention of this Court to the order dated 04.09.2018



passed by the Regulatory Authority, wherein a categorical finding was recorded regarding the delay in completion of construction and the consequent entitlement of respondent No.3 to seek refund of the amount deposited by him. The Regulatory Authority had already adjudicated upon the entitlement of respondent No.3 to withdraw from the project and had recognized his right to refund and compensation, leaving only the issue of quantification to be considered thereafter.

In view of the aforesaid factual and legal position, this Court is of the considered opinion that since the determination was already made by the Regulatory Authority regarding entitlement of respondent No.3 to refund vide order dated 04.09.2018, which cannot be faulted with, the impugned order dated 10.01.2019 passed by the Adjudicating Authority deserves to be sustained to the extent it gives effect to the determination of refund and compensation flowing from the order passed by the Regulatory Authority.

However, insofar as the determination and award of interest by the learned Adjudicating Officer are concerned, the same travel beyond the statutory jurisdiction vested in the Adjudicating Officer under Section 71 of the Act of 2016 and, therefore, cannot be sustained in the eyes of law. Accordingly, the impugned order dated 10.01.2019 is set aside to the limited extent of determination and award of interest by the learned Adjudicating Officer. The matter is remitted to the Regulatory Authority to consider and determine the issue relating to interest payable to respondent No.3 strictly in accordance with law, after affording adequate opportunity of hearing to all concerned parties and keeping in view the law laid down by the Hon'ble



Supreme Court in *M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of Uttar Pradesh and Others* (supra).

Consequently, the Recovery Certificate and all consequential recovery proceedings shall remain operative only to the extent of the principal amount and compensation determined in accordance with law by the respective Regulatory and Adjudicatory Authorities and, thereafter, with regard to the component of interest, only to the extent as may be freshly determined by the Regulatory Authority in accordance with law.

With the aforesaid observations and directions, the present writ petition stands disposed of.

(MILIND RAMESH PHADKE)
JUDGE

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