

M/s Ireo Grace Realtech Pvt. Ltd.  
Vs.  
Sharat Aggarwal  
CM Nos.77, 78, 79 & 62 of 2024  
In Appeal No. 62 of 2024

Present: Mr. Kamaljeet Dahiya, Advocate, along with  
for the appellant.

Challenge in the appeal is to order dated  
29.10.2021 passed by the Adjudicating Officer, H-RERA,  
Gurugram. Operative part whereof reads as under:

*“16. In circumstances as described above, in my opinion, the respondent was not entitled to retain the amount, rather was duty bound to return it to the complainant, when demanded by latter. This complaint is thus allowed. Respondent is directed to refund the amount received from the complainant i.e. Rs.92,92,294/- to the latter, within 90 days from the date of this order, along with interest @ 9.30% p.a. from the date when complainant asked for refund of payment, till its realization. A cost of litigation etc, Rs.1,00,000/- is imposed upon respondent to be paid to complainant.*

*17. File be consigned to the Registry.”*

2. Mr. Dahiya submits that on the date order was passed in judgment of *M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others etc. 2022 (1) RCR (Civil) 357* had been rendered. In view of the same, the power to grant any decree vested wholly-solely in the Authority and not in the Adjudicating Officer. As per him, the Adjudicating Officer did not have the subject matter jurisdiction on the date he passed the decree. Relying upon the judgment rendered in *Sneh Lata Goel v. Pushplata and others (Civil Appeal No.116 of 2019)*, he submits that since the Adjudicating Officer did not have the subject matter jurisdiction, the decree passed by him is *non est* and cannot be executed. Yet, the same Adjudicating Officer

has entertained the execution application and has gone to the extent to issuing of Recovery Certificate. He has referred to the order passed in bunch of Writ Petitions decided along with CWP No.19638 of 2023 titled as IREO Grace Realtech Pvt. Ltd. and others v. State of Haryana and others by the Hon'ble High Court wherein following observations has been made made:

*“3. After arguing for some time and after drawing our attention to the table in para no. 25 of the writ petition, it has been pointed out that various amounts would be outstanding against the allottees. However, since there is remedy of appeal available under Section 43 of the Real Estate (Regulation and Development) Act, 2016, counsel submits that the petitioners may be relegated to their remedy before the Appellate Tribunal. It is submitted that though there is a requirement of pre-deposit, he has relied upon the observations made by the co-ordinate Bench in CWP-6688-2021, Ramprastha Promoters and Developers Pvt. Ltd. vs. Union of India and others, decided on 13.01.2022 that he would file an appropriate application before the Appellate Tribunal for dispensing with the pre-deposit issue projecting the hardships etc. of the petitioners in accordance with law.*

*4. Keeping in view the above, we permit the writ petitions to be dismissed as withdrawn with the aforesaid liberty.”*

4. In view of above, Mr. Dahiya submits that the only prayer in this appeal would be to transfer the proceedings to the Forum having competent jurisdiction to deal with the matter. Thus, necessity of pre-deposit is not there in the instant appeal.

5. Issue notice of application (CM No. 80 of 2024) seeking waiver/exemption from making pre-deposit for 29.05.2024.

6. Notice re: application (CM No.78 of 2024) seeking  
condonation of delay as well.

7. Process be issued for this purpose.

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal

25.04.2024  
Manoj Rana