

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Date of Decision: 15.11.2022

- (1) Misc. Application No.71 of 2022
in Appeal No.153 of 2019

Raj Bhooshan Chopra Chopra s/o Shri Roop Chand
Chopra, Resident of J-41, Kirti Nagar, New Delhi-110015.
Applicant/Appellant

Vs.

M/s VSR Infratech Pvt. Ltd., A-22, Hill View Apartment
Vasant Vihar, New Delhi-110057.

Respondent

- (2) Misc. Application No.72 of 2022
in Appeal No.150 of 2019

Behari Lal Bakshi son of late Shri Mani Ram Bakshi,
Resident of Flat No.2012, Engineers Appts., Plot No.11,
Sector 18-A, Dwarka, New Delhi-110078.

Applicant/Appellant

Vs.

M/s VSR Infratech Pvt. Ltd., A-22, Hill View Apartment
Vasant Vihar, New Delhi-110057.

Respondent

- (3) Misc. Application No.73 of 2022
in Appeal No.151 of 2019

1. Roop Chand Chopra s/o late Shri Dhalu Ram Chopra
2. Raj Bhooshan Chopra Chopra s/o Shri Roop Chand
Chopra,

Both Resident of J-41, Kirti Nagar, New Delhi-
110015.

Applicants/Appellants

Vs.

M/s VSR Infratech Pvt. Ltd., A-22, Hill View Apartment
Vasant Vihar, New Delhi-110057.

Respondent

(4) Misc. Application No.74 of 2022
in Appeal No.152 of 2019

Behari Lal Bakshi son of late Shri Mani Ram Bakshi,
Resident of Flat No.2012, Engineers Appts., Plot No.11,
Sector 18-A, Dwarka, New Delhi-110078.

Applicant/Appellant

Vs.

M/s VSR Infratech Pvt. Ltd., A-22, Hill View Apartment
Vasant Vihar, New Delhi-110057.

Respondent

CORAM:

Shri Inderjeet Mehta,	Member (Judicial)
Shri Anil Kumar Gupta,	Member (Technical)

Argued by: Ms. Rupali Shekhar Verma, Advocate,
learned counsel for the appellants.
Shri Aman Arora, Advocate, learned
counsel for the respondent.

ORDER:

INDERJEET MEHTA, MEMBER (JUDICIAL):

By virtue of the present order handed down in this miscellaneous application no.71 of 2022 in appeal no.153 of 2019, titled as “Raj Bhooshan Chopra vs. M/s VSR Infratech Private Limited” the other afore-captioned similar applications bearing no.72/2022 in appeal no.150 of 2019 titled as “Behari Lal Bakshi and another vs. M/s

VSR Infratech Private Limited” application no.73 of 2022 in appeal no.151 of 2019 titled as “Roop Chand Chopra and another vs. M/s VSR Infratech Private Limited” and application no.74 of 2022 in appeal no.152 of 2019 titled as “Behari Lal Bakshi and another vs. M/s VSR Infratech Private Limited” shall also be disposed of.

2. The appellants/applicants have preferred applications under Section 53 and 54 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called ‘the Act’) for recalling of the order dated 02.09.2019 handed down by this Tribunal and for restoration of the appeals to their original numbers and status.

3. We have heard learned counsel for the parties and have thoroughly gone through the contents of the applications as well as the material available on the record.

4. The appellants/applicants being allottees had preferred the following complaints before the Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called ‘the Authority’), seeking refund of the respective amounts deposited by them:-

Sr.NO.	Case Title	Filed on/ First date	Decided on
1.	229/2018 – Raj Bhooshan Chopra vs. VSR Infratech Pvt. Ltd.	05.06.2018	22.11.2018
2.	230/2018 – Behari Lal Bakshi vs. VSR Infratech Pvt. Ltd.	05.06.2018	22.11.2018
3.	231/2018 –Roop Chand Chopra vs. VSR Infratech Pvt. Ltd.	05.06.2018	22.11.2018

4.	232/2018 – Behari Lal Bakshi vs. VSR Infratech Pvt. Ltd.	05.06.2018	22.11.2018
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5. Though, the appellants/applicants had sought the relief of the refund, but by dint of order dated 22.11.2018 handed down by the learned Authority, the appellants/applicants were granted the relief of possession of their respective units along with interest on delayed possession.

6. Aggrieved by the same, the appellants/applicants had preferred appeals before this Tribunal and the said appeals were disposed of by this Tribunal vide order dated 02.09.2019 with the following relevant observations:-

“9. Thus, keeping in view of our aforesaid discussions, the present appeal is hereby allowed. The impugned order dated 22.11.2018 is hereby set aside. The complaint filed by the appellant/allottee stands transferred to Adjudicating Officer, Gurugram for adjudication in accordance with law. The Adjudicating Officer will allow the appellant/allottee to amend his complaint in order to bring it within the parameters of Form “CAO” as provided in rule 29 of the Rules.

10. This order passed by this Tribunal and observation of the learned Authority in the impugned order will not prejudice the mind of the learned Adjudicating Officer qua the rights of the parties on merits of the case.

11. *The parties are directed to appear before the Learned Adjudicating Officer, Gurugram on 16.09.2019 for further proceedings. Copy of this order be communicated to the learned Real Estate Regulatory Authority, Gurugram and the learned Adjudicating Officer, Gurugram for compliance.*
12. *File be consigned to records.”*

7. Thereafter, as observed by the learned Authority in its order dated 31.05.2022 (Annexure A-2), placed by the appellants/applicants along with the applications for revival, the complaints preferred by the appellants/applicants were allotted new numbers and these complaints were heard by the learned Adjudicating Officer from September, 2019 to November, 2021 and arguments were concluded, and the order was reserved for 24.11.2021. Further, it has been observed that in view of the judgment dated 11.11.2021 passed by the Hon'ble Apex Court in ***Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. 2022(1) R.C.R. (Civil) 357***, the matters regarding refund and interest under Section 18 of the Act, are to be decided by the Authority. In the said order dated 31.05.2022, the learned Authority also made the following observations:-

“.....However, the authority has already heard and decided the instant complaints vide respective orders mentioned in the above table

and hence, the doctrine of functus officio will apply. Moreover, the authority cannot review its own order.

Request allowed. In the matter of fact, the authority has already deliberated upon the concerned cases and has already taken its view. Assuming-being an aggrieved party by the order of the authority, complainants have approached the Appellate Tribunal. In view of natural justice, the authority directs registry for immediate transfer of above-mentioned cases to the Hon'ble Tribunal for continued consideration of the appeals against the said cases."

8. Here, it is pertinent to mention that this aforesaid order dated 31.05.2022 has been handed down by the learned Authority on an application dated 05.05.2022 preferred by the appellants/applicants requesting the learned Authority to transfer the aforesaid complaint cases to this Tribunal.

9. The aforesaid observations made by the learned Authority stating that the learned Authority has already heard and decided the complaints vide respective orders and it cannot review its own order, cannot be sustained in the eyes of law, firstly, on account of the fact that this Tribunal vide order dated 02.09.2019 handed down in the captioned appeals had set aside the impugned order dated 22.11.2018 handed down by the learned Authority and

legally that order dated 22.11.2018 does not exist at all, and secondly, in view of the judgment ***Newtech Promoters'*** case (Supra), handed down by the Hon'ble Apex Court, the learned Authority is now legally bound to decide the matter afresh. While deciding the matter afresh, the learned Authority would not be swayed by the observations made by it in its earlier order dated 22.11.2018, which has already been set aside by this Tribunal vide order dated 02.09.2019 and has attained finality as no appeal/revision against the same has been filed.

10. Thus, as a conclusion to the aforesaid discussion, the present applications preferred by the appellants/applicants for revival of the appeals are hereby dismissed and the said order dated 31.05.2022 handed down by the learned Authority is also set aside. The matter is remitted back to the learned Authority for disposal of the complaints preferred by the complainants afresh.

11. Since, the matter has already been considerably delayed, so the learned Authority is hereby directed to dispose of the matter preferably within a period of one month from the date of putting up in appearance by the parties before the learned Authority.

12. Parties are directed to appear before the learned Authority on 21.11.2022 for further appropriate proceedings.

13. Copy of this order be communicated to the parties/learned counsel for the parties and the learned Real Estate Regulatory Authority, Gurugram for compliance.

14. This order be placed on Misc. Application No.71 of 2022, Appeal No.153 of 2019 and copies be placed with the other three applications/appeals.

Announced:
November 15, 2022

Inderjeet Mehta
Member (Judicial)
Haryana Real Estate Appellate Tribunal,
Chandigarh

Anil Kumar Gupta
Member (Technical)

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