

PROCEEDINGS OF THE DAY		1
Day and Date	Wednesday and 07.12.2022	
Complaint No.	CR/613/2018/873/2021 Case titled as MRIDULA PARTI AND PARTHA SARATHI DE Vs MICROTEK INFRASTRUCTURES PVT LTD.	
Complainant	MRIDULA PARTI AND PARTHA SARATHI DE	
Represented through	Complainant in person with Shri Sukhbir Yadav Advocate	
Respondent	MICROTEK INFRASTRUCTURES PVT LTD	
Respondent Represented	Ms. Shriya Takkar Advocate	
Last date of hearing	04.10.2022	
Proceeding Recorded by	Naresh Kumari and HR Mehta	
Proceedings		
<p>The present complaint was received on 26.07.2018 and reply on behalf of respondent was filed on 25.09.2018.</p> <p>File has been received on transfer from Adjudicating Officer in view of the judgment dated 11.11.2021 passed by the Apex Court in the case bearing no. (SLP(Civil) No(s). 3711-3715 OF 2021) titled as M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors., and wherein it was held that as matters regarding refund and interest under section 18(1) are to be decided by the authority and matters regarding adjudging compensation to be decided by the Adjudicating officer.</p> <p>Succinct facts of the case as per complaint and annexures are as under:</p>		
S. N.	Particulars	Details
1.	Name of the project	"Greenburg", Sector 86, Gurugram



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HARYANA REAL ESTATE REGULATORY AUTHORITY
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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

CR/613/2018/813/2021

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

2.	Nature of the project	Residential
3.	DTCP license no. and validity status	104 of 2010 dated 03.12.2010 valid upto 02.12.2022
4.	Name of licensee	Sh. Shiv Rattan and another
5.	RERA Registered/ not registered	Not registered
6.	RERA registration valid up to	N/A
7.	Allotment Letter	20.05.2015 (Page 54 of complaint)
8.	Unit no.	602, 6 th floor, Tower J (Page 19 of complaint)
9.	Unit area admeasuring	1480 sq. ft. (Page 19 of complaint)
10.	Date of execution of Apartment Buyer's Agreement	21.05.2015 (Page 12 of complaint)
11.	Possession clause	11(a) Schedule for possession of the Said Apartment The Project Developer based on its present plans and estimates and subject to all just exceptions endeavours to ample construction and offer possession of the Said Building/Said Apartment within a period of Thirty Nine (39) months from the date of construction i.e., 1st October, 2013 unless there shall be delay or failure due to Force majeure conditions including but not limited to reasons mentioned in clause 11 (b) and 11 (c) or due to failure of the to pay in time the Total Price and other charges and dues/payments mentioned in this Agreement or any failure on

		the part of the Allottee(s) to abide by all or any of the terms and conditions of this Agreement.
12.	Due date of possession	01.01.2017 (Calculated as 39 months from the date of start of construction i.e., 01.10.2013)
13.	Total sale consideration	Rs. 1,28,09,000/- including taxes, PLC and other charges (As per BBA on page 20 of complaint)
14.	Amount paid by the complainant	Rs. 40,16,977/- (As mentioned by complainant on page 4 of complaint)
15.	Occupation certificate /Completion certificate	27.07.2017 but the concerned tower J is not mentioned in the OC (Page 58 at annexure B of reply)
16.	Offer of possession	14.07.2018 (Page 61 of reply)

On the last date of hearing, the counsel for respondent submitted that an arbitration award passed on 21.07.2020 has already been challenged in the Civil Court, Gurugram. He further put forth several judgments of NCDRC in similarly situated cases and requested for adjourning the matter sine die.

Part arguments heard.

The counsel for the complainant states that the present application was filed on 25.07.2018 while arbitration proceedings were initiated on 01.05.2019. Therefore, the arbitration proceedings were initiated after the application/complaint was filed before this Authority. He further states that the jurisdiction of Civil Courts is barred as per provisions of section 79 of the Act, 2016.

Further, as per the judgment of Hon'ble Supreme court of India in the matter of **Newtech Promoters and Developers Pvt. Ltd. versus State of U.P. . and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited &**



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other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022, it was observed that:-

25. *The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed,*

Therefore, the present proceedings must be continued and there is no bar in proceeding further in this regard.

On the other hand, the counsel for the respondent states that since the arbitration award still stands, although stayed by the Special Commercial Court, proceedings cannot continue unless the same is finally settled. The counsel for the respondent states that an application challenging the jurisdiction of Arbitration Tribunal had been dismissed and petition under section 16 of Arbitration Act before the Civil Court was withdrawn.

Both the parties are directed to submit written submissions on the point of maintainability within one week with an advance copy to each other.

Matter to come up on **23.12.2022** for further proceedings.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member
07.12.2022