

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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**Appeal No.339 of 2019  
Date of Decision: 26.04.2022**

Vijay Sagar, resident of Flat No.238, Gangotri Apartment,  
Pocket-1, Sector 12, Dwarka, New Delhi 110 075

...Appellant

Versus

M/s VSR Infratech Pvt. Ltd., A-22, Hill View Apartments,  
Vasant Vihar, New Delhi 11 0057

...Respondent

**CORAM:**

<b>Justice Darshan Singh (Retd),</b>	<b>Chairman</b>
<b>Shri Inderjeet Mehta,</b>	<b>Member (Judicial)</b>
<b>Shri Anil Kumar Gupta,</b>	<b>Member (Technical)</b>

**Present:** Ms. Rupali Shekhar Verma, Advocate,  
Ld. counsel for the appellant-allottee.

Shri Aman Arora, Advocate for  
Shri A.R. Takkar, Advocate,  
Ld. counsel for the respondent-promoter.

**ORDER:**

**JUSTICE DARSHAN SINGH (RETD.) CHAIRMAN:**

The present appeal has been preferred against order dated 28<sup>th</sup> February, 2019 passed by the Ld. Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Ld. Authority') whereby complaint No.1069 of 2018 filed by the

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appellant-allottee was disposed of with the following directions: -

- “(i) The respondent is directed to pay the complainant delayed possession charges w.e.f 25.09.2016 minus the period w.e.f. 09.01.2015 to 16.07.2015 i.e. 06 months and 07 days in which the matter was sub-judice.*
- (ii) The respondent is further directed not to charge any maintenance charges amounting to Rs.15,313/- and administrative charges amounting to Rs.15,000/- from the complainant.”*

2. The appellant-allottee has sought the relief seeking direction to handover the possession of shop with Occupation Certificate (OC) and specifications given in Buyer's Agreement within 03 months from the date of filing the complaint and to pay interest for every month of delay from due date of possession, in the alternative the appellant-allottee has sought the relief for refund of the amount paid to the respondent-promoter.

3. On hearing Ld. counsel for the parties and appreciating the material on record, the Ld. Authority

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disposed of the complaint filed by the appellant-allottee by issuing directions as reproduced in the upper part of this order.

4. Aggrieved with the aforesaid order, the present appeal has been preferred by the appellant-allottee.

5. We have heard Ms. Rupali Shekhar Verma, Advocate, Ld. counsel for the appellant-allottee, Shri Aman Arora, Advocate, Ld. counsel for the respondent-promoter and carefully gone through the record of the case.

6. Certain facts are undisputed. The appellant-allottee had booked a commercial shop in the Project 68 Avenue, Sector 68, Gurugram. The Space Buyer's Agreement (for short, 'the Buyer's Agreement') was executed on 25.06.2013. The total sale price was Rs.26,78,821/-, out of that the appellant-allottee has already paid a sum of Rs.25,30,021/-. The payment plan was Construction Linked Payment Plan. As per the terms and conditions of the Buyer's Agreement, the possession was to be delivered within 36 months + 06 months grace period from the date of agreement or the date of start of construction whichever is later. The construction had started on 26<sup>th</sup> July, 2012, so the due date of delivery of possession comes to 25<sup>th</sup> September, 2016. It is an admitted fact that the possession of the shop in question could not be delivered by

the respondent-promoter to the appellant-allottee within the scheduled completion period as per terms of the Buyer's Agreement. The respondent-promoter had moved an application for issuance of Occupation Certificate on 31.07.2018. The Occupation Certificate was granted by the competent authority on 15.01.2019 and complaint was filed on 26.09.2018 i.e. prior to the receipt of the Occupation Certificate.

7. Ld. counsel for the appellant-allottee has contended that as the respondent-promoter has not been able to deliver the possession within the stipulated period, so the appellant-allottee has become entitled for relief of refund, which has been wrongly declined by the Ld. Authority. She relied upon the judgment of Hon'ble Apex Court of India in ***M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. 2022 (1) R.C.R. (Civil) 357.***

8. On the other hand, Ld. counsel for the respondent-promoter contended that the delay in delivery of possession has occurred due to stay order of Hon'ble High Court in CWP No.23839 of 2014 tilted as *Mukesh Sharma Vs. State of Haryana*, which has been enumerated in the affidavit dated 23<sup>rd</sup> April, 2021 filed by the respondent-promoter before this Tribunal.

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9. He further contended that the Ld. Authority has rightly declined the relief of refund and directed the respondent-promoter to deliver the possession of the unit along with delayed possession charges.

10. We have duly considered the aforesaid contentions.

11. As already mentioned, as per terms and conditions of the agreement, the respondent-promoter was required to deliver the possession of the shop in question to the appellant-allottee by 25<sup>th</sup> September, 2016.

12. Ld. counsel for the respondent-promoter could not dispute that even the application for issuance of Occupation Certificate was moved on 21<sup>st</sup> July, 2017 that is much after the expiry of the said date of scheduled completion of the project i.e. 25<sup>th</sup> September, 2016.

13. It is further an admitted fact that the stay order issued by the Hon'ble High Court was modified vide order dated 16<sup>th</sup> July, 2015. Ld. counsel for the respondent-promoter states that even then the project of the respondent-promoter was covered in the stay order owing to the non-issuance of the water supply connection. Thus, he has pleaded that the Ld. Authority after taking consideration on

this aspect that the project is already complete, the relief of the refund was declined.

14. The Hon'ble Apex Court in ***M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. (supra)*** has laid down as under:

*“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*

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*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.”*

15. As per the aforesaid ratio of law laid down by the Hon'ble Apex Court, the allottee has an unqualified right for refund under Section 18(1)(a) of the Real Estate (Regulation and Development) Act, 2016 (for short, the Act) and Section 19(4) of the Act, which is not dependent on any contingencies or stipulations. It was further observed that the right of refund on demand is 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. It is admitted fact that the litigation pending before the Hon'ble High Court was not attributable to the appellant-allottee. So, the stay order granted by the Hon'ble High Court in CWP No.23839 of 2014 will not absolve of the respondent-promoter from its liability to perform its obligation as per the terms and conditions of the Buyer's Agreement and provisions of the Act.

16. Thus, as per the aforesaid ratio of law laid down by the Hon'ble Apex Court, as the respondent-promoter has failed

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to deliver the possession of the shop in question to the appellant-allottee within the stipulated period as per the terms and conditions of the Buyer's Agreement dated 25.06.2013, so, in our view, the appellant-allottee has become entitled to refund of the amount paid along with prescribed rate of interest from the date of respective deposit of each amount.

17. Thus, in view of our aforesaid discussions, the present appeal is hereby allowed and the impugned order dated 28.02.2019 is hereby set aside. The respondent-promoter is directed to refund Rs.25,98,010/- to the appellant-allottee along with interest from the date of respective deposit of each deposit till the date of realization.

19. Copy of this order/judgment be sent to the parties/ Ld. counsel for the parties and Ld. Haryana Real Estate Regulatory Authority, Gurugram for information and necessary compliance.

20. File be consigned to the record.

Announced:  
April 26, 2022

Justice Darshan Singh (Retd.)  
Chairman,  
Haryana Real Estate Appellate Tribunal,  
Chandigarh

Anil Kumar Gupta  
Member (Technical)