

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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Appeal No. 51 OF 2023  
Date of Decision: 15.05.2023

1. M/s Mudra Finance Ltd. Registered office at G-12/A, First Floor, Hauz Khas, New Delhi-110016.
2. M/s Vipul Limited, Corporate office Vipul Techsquare, Golf Course Road, Sector-43, Gurugram, Hayrana-122009.

Appellants

Versus

1. Anuj Chauhan, C/o Nagendra Chauha, Vill-Ruhakli, Haridwar (Uttrakhand)-251327.
2. Haryana Real Estate Regulatory Authority, Panchkula, Mini Secretariat, New Office Block, 2<sup>nd</sup> and 3<sup>rd</sup> Floor, Sector-1, Panchkula-134114.

Respondents

**CORAM:**

**Justice Rajan Gupta  
Shri Inderjeet Mehta  
Shri Anil Kumar Gupta**

**Chairman  
Member (Judicial)  
Member (Technical)**

Present: Mr. Vineet Sehgal, Advocate  
for the appellant.

Mr. Anuj Chauhan,  
respondent no. 1 in person.

**O R D E R:**

**ANIL KUMAR GUPTA, MEMBER (TECHNICAL):**

The present appeal has been preferred under  
Section 44(2) of the Real Estate (Regulation and

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Development) Act 2016 (further called as 'the Act') by the appellant/promoter against impugned order dated 07.07.2022 passed by the Haryana Real Estate Regulatory Authority, Panchkula (for short 'the Authority') whereby Complaint No. 903 of 2020 filed by the respondent/allottee was disposed of with the following directions:

*"8. Authority allows relief of refund along with interest which is calculated in accordance with Rule 15 of the HREERA Rules i.e. @ SBI MCLR+2% (9.70%). Authority has got calculated interest from its Account branch which is shown below in the table. Respondent shall pay the entire amount within 90 days of uploading of this order."*

<i>Total Amount Paid</i>	<i>Interest Rate (9.70%)</i>	<i>Total Amount to be Refunded</i>
<i>Rs. 13,07,008</i>	<i>Rs. 4,54,790/-</i>	<i>Rs. 17,61,798</i>

2. As per averments in the complaint, the respondent/allottee had booked a flat/unit no. 403, 4<sup>th</sup> floor, Tower no. 11, measuring carpet area 1018 sq. ft. and super area of 1515 sq. ft. in appellant's project "Vipul Gardens" Dharuhera, Rewari, by paying booking amount of Rs. 3,40,000/-. Builder Buyer's Agreement (for short 'the agreement') was executed between the

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parties on 11.12.2018. As per clause no. 8.1(a) of the agreement, the possession of the unit was to be delivered in July 2019. The respondent-allottee had paid a sum of Rs. 13,07,008/- against the total sale consideration of Rs. 32,17,053/-, but possession was not delivered to him till the filing of the complaint. The respondent-allottee approached the Authority seeking relief of refund along with interest as offer of possession of the unit was delayed.

3 The complaint was resisted by the appellant-promoter on the ground that its project was complete. The Occupation Certificate in respect of Block Nos. 1,2,3,4,5,6,7 and 12 had been granted by the competent authority on 01.12.2014. However, in regard to Tower no. 11, in which the respondent-allottee's unit is situated, the appellant had applied for grant of Occupation Certificate on 26.06.2019, but, the same was not issued. It was also pleaded that the project has delayed on account of some environmental clearances.

4. The Authority after hearing the pleadings of both the parties passed the impugned order, the operative part of which has already been reproduced in paragraph No.1 of this order.

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5. Aggrieved with the aforesaid order of the Authority, the appellant has preferred the present appeal.

6. There is a delay of 115 days in filing of the present appeal. The appellant has moved an Application (CM No. 121 of 2023) for condonation of delay in filing of the appeal, which is supported by an affidavit of Mr. Rajesh Gopalkrishnan, Authorised Representative of the appellant-company. For the reasons stated in the application, the delay of 115 days in filing the present appeal is condoned. Accordingly, the application for condonation of delay stands allowed.

7. We have heard, learned counsel for the appellant as well as Mr. Anuj Chauhan, respondent no. 1 in person and have carefully examined the record.

8. At the outset, it was contended by learned counsel for the appellant/promoter that the development works at the site were completed and the appellant had applied for grant of Occupation Certificate with the Director General, Town and Country Planning, Haryana (DGTCP) way back on 26.06.2019 for the building block/tower no. 11 in which the respondent-allottee has been allotted the unit. He further contended that the Occupation Certificate for block no. 1,2,3,4,5,6,7 & 12

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has already been received on 01.12.2014. However, the Occupation Certificate of the tower in which the unit of the allottee is situated, has yet not been issued by DGTCP. He submitted that since, the unit is complete, therefore, the refund of the amount along with interest granted by the authority is not correct and the impugned order dated 07.07.2022 passed by the Authority is liable to be set aside.

9. Per contra, learned counsel for the respondent/allottee contended that the impugned order dated 07.07.2022 passed by the Authority for grant of refund along with interest is just and fair and is as per law.

10. We have duly considered the aforesaid contentions of both the parties.

11. The undisputed facts of case are that the respondent/allottee had booked a flat/unit no. 403, 4<sup>th</sup> floor, tower 11, measuring carpet area 1018 sq. ft. and super area of 1515 sq. ft. in appellant's project 'Vipul Gardens' Dharuhera, Rewari, by paying booking amount of Rs. 3,40,000/-. The agreement between the parties was executed on 11.12.2018. The respondent-allottee

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had paid a sum of Rs. 13,07,008/- against the total sale consideration of Rs. 32,17,053/-.

12. There is no dispute regarding the fact that as per the agreement executed between the parties, the appellant was to offer the possession of the unit in the month of July 2019 i.e. only seven months after the date of execution of the agreement. As per the appellant, the occupation certificate in respect of tower no. 11 in which the respondent- allottee's unit is situated, has been applied on 26.06.2019, but the same has not been received by it till date. No reason for delay in completion of the unit or issue of Occupation Certificate has been mentioned in the grounds of appeal. Also, the written statement was not filed by the appellant. Thus, it is observed that the delay in issue of the Occupation Certificate and issue of offer of possession is totally on account of the reasons attributed to the appellant. The respondent/allottee cannot be expected to wait endlessly for getting possession of the allotted unit for which he had paid a considerable amount towards the sale consideration. The case of the respondent/allottee is in ambit of Section 18(1) of the Act, which states that if the allottee wishes to withdraw from the project and demands return of the amount received by the promoter

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in respect of the unit with interest on failure of the promoter to complete or unable to give the possession of the unit, the allottee is entitled for refund of the amount along with interest. The said case of the respondent/allottee is fully covered by the judgment of Hon'ble Supreme Court of India in *Newtech Promoters and Developers Pvt. Ltd. versus State of U.P. and Others* 2021 SCC Online SC 1044. The relevant part of the of which is reproduced as below:

*“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*

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*entitled for interest for the period of delay till handing over possession at the rate prescribed.”*

13. The above said judgment in case of *M/s Newtech Promoters’ supra* is fully applicable in the present facts of the case as the appellant/promoter has failed to complete the unit by the due date of possession i.e. July 2019. The appellant could not point out any infirmity with the impugned order passed by the authority. Therefore, in our opinion, the respondent-allottee is entitled for refund of the amount along with interest as awarded by the Authority.

14. No other point was argued before us.

15. Consequently, we find no merit in the present appeal filed by the appellant/promoter and therefore, the same is hereby dismissed.

16. The amount of Rs.17,61,798/- deposited by the appellant/promoter with this Tribunal as pre-deposit to comply with the provisions of proviso to Section 43(5) of the Act, along with interest accrued thereon, be sent to the Authority for disbursement to the respondent/allottee subject to tax liability, if any, as per law.

17. No order as to costs.



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18. Copy of this judgment be communicated to both the parties/counsel for the parties and Haryana Real Estate Regulatory Authority, Panchkula.
19. File be consigned to the record.

Announced:  
May 15, 2023

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal,

Inderjeet Mehta  
Member (Judicial)

Anil Kumar Gupta  
Member (Technical)

Rajni