

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Date of Decision: October 01,2025

(1) Appeal No. 366 of 2024

1.Vineeta Kukreti, wife of Sh. Gaurav Mehta, resident of House No. 1801, Tower 2, Tata Primanti apartments, Sector 72, Gurugram, Haryana. PIN 122018

2. Gaurav Mehta, son of Sh. Jai Prakash Mehta, resident of House No. 1801, Tower 2, Tata Primanti apartments, Sector 72, Gurugram, Haryana.PIN122018

Appellants.

Versus

1. Roshni Builders Private Limited, Regd. Office: LGF, F-22, Sushant Shopping Arcade, Sushant Lok Phase 1, Gurugram, Haryana. PIN122002

2. Chaahat Homes Infrastructure Private Limited, Regd. Office: SCO 125, Sector 46, First Floor, HUDA Commercial Market, Gurugram, Haryana. PIN122001

Respondents

(2) Appeal No. 369 of 2024

1.Vineeta Kukreti, wife of Sh. Gaurav Mehta, resident of House No. 1801, Tower 2, Tata Primanti apartments, Sector 72, Gurugram, Haryana. PIN 122018

2. Gaurav Mehta, son of Sh. Jai Prakash Mehta, resident of House No. 1801, Tower 2, Tata Primanti apartments, Sector 72, Gurugram, Haryana.PIN122018

Appellants.

Versus

1. Roshni Builders Private Limited, Regd. Office: LGF, F-22, Sushant Shopping Arcade, Sushant Lok Phase 1, Gurugram, Haryana. PIN122002

2. Chaahat Homes Infrastructure Private Limited, Regd. Office: SCO 125, Sector 46, First Floor, HUDA Commercial Market, Gurugram, Haryana. PIN122001

Respondents

(3) Appeal No. 370 of 2024

1.Jai Parkash Mehta, son of Sh. Bal Kishen Mehta, resident of House No. C 101, Progressive Apartments, GH 69, Sector 55, Gurugram, Haryana. PIN122011

2. Krishna Kumari wife of Sh. Jai Prakash Mehta, resident of House No. C 101, Progressive Apartments, GH 69, Sector 55, Gurugram, Haryana. PIN 122011

Appellants.

Versus

- 1. Roshni Builders Private Limited, Regd. Office: LGF, F-22, Sushant Shopping Arcade, Sushant Lok Phase 1, Gurugram, Haryana. PIN122002
- 2. Chaahat Homes Infrastructure Private Limited, Regd. Office: SCO 125, Sector 46, First Floor, HUDA Commercial Market, Gurugram, Haryana. PIN122001

Respondents

Coram:

Justice Rajan Gupta	Chairman
Dr. Virender Parshad	Member (Judicial)
Dinesh Singh Chauhan	Member (Technical)

Present: Mr. Harkirat Singh Ghuman, Advocate for the appellant-allottees.

Mr. Aman Arora, Advocate along with
Mr. Archit Rana, Advocate for the respondents.

RAJAN GUPTA, CHAIRMAN:

This order shall dispose of above-mentioned appeals, as common questions of law and facts are involved therein. However, the facts have been extracted from Appeal No. 366 of 2024.

2. Present appeal is directed against order dated 07.03.2024, passed by the Authority¹. Operative part thereof reads as under:

“H. Directions of the authority:

- 27. Hence, in view of the findings recorded by the authority on the aforesaid issues, no case of refund of the paid-up amount with interest is made out. Hence, the complaint is liable to be dismissed and as such is rejected.*
- 28. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.*
- 29. The complaints stand disposed of. True certified*

¹ Haryana Real Estate Regulatory Authority, Gurugram

copies of this order be placed on the case file of each matter.

30. Files be consigned to the registry.”

3. It appears that an advertisement was published by the promoter offering ‘3 deals in one’ to the general public. The applications were invited for the project, namely ‘M3M Broadway’ in Sector 71, Gurugram to be floated by the promoter. It was given out that the allottee would have to pay only 10% of the amount on booking and balance on offer of possession. It was also stated that the allottee could exit any time from the project. This would be clear from perusal of the advertisement (Annexure A-1). The appellant-allottees applied in response to the advertisement and were allotted a commercial unit measuring 403 square feet for total consideration of Rs.1,20,61,967/-. The appellant-allottees paid an amount of Rs.12,06,196/-. Allotment letter dated 07.08.2020 was issued to them. Due date of possession was stated to be 31.10.2023. The respondent-promoter claims that the allottees were supposed to deposit further 80% of the sale consideration when the respondent-promoter would apply for Occupation Certificate. Promoter claims that application for grant of Occupation Certificate was submitted on 31.08.2021. However, same was rejected due to certain technical defects. On fresh application being submitted on 01.12.2021, Occupation Certificate was ultimately granted on 13.12.2021. Vide e-mail dated 14.11.2021 (Annexure A-13), the appellant-allottees expressed their desire to exit from the project and sought complete refund of the amount remitted by them. They stated that they had unqualified right to do so in view of the

judgment in ***M/s Newtech Promoters and Developers Pvt. Ltd. v. State of UP, 2022(1) RCR (Civil) 367*** (para 78).

4. We have heard learned counsel for the parties and gone through the record with their assistance.

5. It is evident that advertisement (Annexure A-1) allured many people to apply for units in project 'M3M Broadway', Sector 71, Gurugram. The licence was, however, issued in the name of Roshni Builders Pvt. Ltd., Highrise Propbuild Pvt. Ltd. Stand of the appellant-allottees is that the respondent-promoter did not abide by the commitments made by it and started sending demand letters for payment of the balance amount before submitting application for Occupation Certificate before the competent authority. Communications dated 22.10.2021 and 25.10.2021 in this regard have been placed on record as Annexures A-10 and A-11. The appellant-allottees, however, reminded the promoter of the terms of advertisement/brochure and webinar hosted by it that 10% of the total consideration value (TCV) was to be paid at the time of booking and remaining 90% at the time of offer of possession. As per the appellant-allottees, the respondent-promoter incorporated different schedule of payment in the allotment letter and BBA, being in dominant position. Needless to say, both the documents were in fine print. Be that as it may, the appellant-allottees claim that they sent e-mail dated 14.11.2021 (Annexure A-13) demanding complete refund of the amount deposited by them in view of the failure of the promoter to adhere to the commitments made in the advertisement/brochure and webinar. One such e-mail is reproduced hereunder for ready reference:

*“From: Gaurav Mehta [gauravmehta99@gmail.com]
Sent: 14/11/2021, 12.15 am
To: feedback@m3mindia.com
Subject: Re: Ticket No. 00130334- Your query with
M3M India for Unit No. R4 107 at M3M Broadway,
Gurugram*

Dear Anjali,

1. Please refer to email received from M3M dated 9th October 2021 (snapshot below) wherein Preeti Chauhan from Team CRM has informed that there shall be no interest charged till offer of possession. It is requested that you revoke this pre-cancellation notice at the earliest.

2. Please make a note that there has been no agreement signed for Broadway unit #R4/105, 106 and 107 yet and the ‘Application Form’ does not construe as legally binding agreement. Also, the terms & conditions stated cannot be wholly one-sided and unjustified.

3. I would like to bring to your kind notice that booking for Broadway unit # R4/105, 106 and 107 was made under the 3D scheme wherein promise of “Exit Anytime” was made at the time of Sale. You may refer to the Broadway event video recordings and advertisements for the same.

4. Also please make a note that you initiate our exit from these 3 Broadway unit # R4/105, 106 and 107 and process refund of the 100% earnest money at the earliest.

Regards

Gaurav Mehta/Vineeta Kukreti/Jai Parkash Mehta”

6. A perusal of the aforesaid e-mail shows that the same was addressed to the promoter prior to the date of fresh application for Occupation Certificate was made i.e. 01.12.2021. It leaves no room for doubt that the allottees sought refund well in time before the Occupation Certificate

was applied for. The question of offer of possession would not arise as Occupation Certificate itself was applied on 01.12.2021. If terms of the advertisement/brochure and webinar are taken into consideration, 90% of the balance amount was to be payable by the allottees on offer of possession. In the instant case, however, the allottees sought to exit even before the date of application for Occupation Certificate by the promoter. We find substance in this plea that the allottees had unqualified right to do so. In this context, observations made by the Supreme Court in **M/s Newtech Promoters and Developers Pvt. Ltd.'s case (supra)** are reproduced hereunder:

*“78. This Court while interpreting Section 18 of the Act, in **Imperia Structures Ltd. v. Anil Patni and Another, 2020(10) SCC 783** held that Section 18 confers an unqualified right upon an allottee to get refund of the amount deposited with the promoter and interest at the prescribed rate, if the promoter fails to complete or is unable to give possession of an apartment as per the date specified in the home buyer's agreement in para 25 held as under:*

“25. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made “without prejudice to any other remedy available to him”. The right so given to the allottee is unqualified and if availed, the

money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the allottee to proceed either under section 18(1) or under proviso to Section 18(1). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the project or claim return on his investment.”

7. The regulatory mechanism of the Act² has been put in place to ensure sale of plots, apartments or buildings, as the case may be, in an efficient and transparent manner. Wherever it is found that terms and conditions of advertisement are being violated and there is tendency to exploit the allottees, the Authority is required to exercise its powers and to ensure that objectives of the RERA Act are not defeated and provisions thereof are promptly invoked to ensure justice to the aggrieved party. In our considered view, the Authority has failed to exercise its powers in the instant case. We have thus no option but to set aside the impugned order with a note of caution that every case be evaluated in its own facts and circumstances and available cogent evidence is not ignored from consideration.

8. In view of our detailed discussion above, we feel

² The Real Estate (Regulation and Development) Act, 2016

that the earnest money paid by the allottees needs to be refunded to them along with interest. Ordered accordingly.

9. The appeals are thus allowed. The respondent-promoter would be liable to refund the earnest money along with interest @ 10.85% per annum from the date of deposit till realization within 90 days of this order.

Tendency of the promoters to cheat innocent buyers by adopting clever tactics needs to be curbed and stern measures are required for this purpose. In these circumstances, it is ordered that in case refund is not made within 90 days, the provisions of Section 64 of the RERA Act will come into play and the promoter would pay a penalty of Rs.10,000/- per day till he refunds the amount to the allottees.

10. Copy of this order be sent to the parties/their counsel and the Authority.

11. Files be consigned to records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Dr. Virender Parshad
Member (Judicial)

Dinesh Singh Chauhan
Member (Technical)

October 01,2025
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