

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM**

**Complaint No. 1369-2025
Date of Decision: 11.02.2026**

Mridula Parti and Partha Sarathi De, Rs/o D-99, G. F., South City II, Gurugram, Haryana 122018.

Complainants

Versus

1. Microtek Infrastructures Private Limited, Address: H-56, Udyog Nagar, Main Rohtak Road, Nangloi, West Delhi, New Delhi, India, 110041.
2. Deepanshu Projects Private Limited, Address: H-56, Udyog Nagar, Main Rohtak Road, Nangloi, West Delhi, New Delhi, India, 110041.

Respondents

APPEARANCE

For Complainants: Ms. Ada Khursheed, Advocate.
For Respondents: Ms. Shriya Takkar, Advocate.

ORDER

1. This is a complaint filed by Mridula Parti and Partha Sarathi De (allottees) under section 31 of The Real Estate (Regulation and Development), Act 2016 (in brief Act of 2016) against M/s. Microtek Infrastructures Private Limited and

Abd
AO

Deepanshu Projects Private Limited, being promoters within the meaning of section 2 (zk) of the Act of 2016.

2. According to complainants, complainant no. 1 (Ms. Mridula Parti) is an NRI being Australian Citizen while complainant no. 2 (Mr. Partha Sarathi De) is her brother. During her visit to India in May/June, 2015, complainant no. 1 was influenced by various advertisements published in both print and electronic media, which led her to book an Apartment/Unit bearing no. Floor No. 6, Tower No. J - 602, (residential), area admeasuring 1480 Sq. Ft., in the respondent's Project "Greenburg" located at Sector 86, Gurugram, Haryana. An allotment letter dated 20.05.2015 was issued by the respondents. The Builder Buyer's Agreement (BBA) was executed between the parties on 21.05.2015. The due date of possession as per BBA was 01.01.2017. The delay in handing over possession till date of filing complaint is more than 1.5 years. The total sale consideration of the said unit was agreed to be Rs.1,02,64,540/-. The total amount paid by the complainants till date of filing complaint was Rs.40,16,977/-.

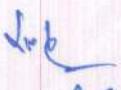
3. That respondents did not provide any updates regarding the progress of construction or the status of the project

Wt
AO

at any stage. The complainant no. 1 was left with no choice but to store her personal belongings in a warehouse, on a monthly rent of Rs.9,440/-. Despite multiple visits and persistent follow-ups by them (complainants), respondents deliberately delayed offering possession of the apartment, even after obtaining the alleged occupation certificate on 27.07.2017. The respondents admitted that DHBVN installed electric meter in premises on or about 20.08.2018. Despite issuing occupation certificate, the unit was not worth residing. This unwarranted delay caused them (complainants) prolong mental harassment, emotional distress and significant financial burdens.

4. That although respondents issued alleged offer of the possession on 14.07.2018 almost a year after receiving OC which is under challenge and added illegal charges which were not part of BBA.

5. That aggrieved in this manner, they (complainants) filed a complaint no. 613 of 2018 before Haryana Real Estate Regulatory Authority (in brief Authority) seeking refund of entire paid amount along with other reliefs. The Authority after considering facts and circumstances, decided said complaint on


AO

29.10.2024. The respondents were directed to refund the amount after deducting 10% of sale consideration, along with interest at rate 11.10% per annum.

6. That feeling aggrieved, they (complainants) have approached this Forum seeking following reliefs: -

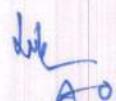
- i). To direct the respondents to pay compensation of Rs.12,00,000/- for not completing the construction on time.
- ii) To direct the respondents to pay compensation of Rs.10,00,000/- for imposing illegal charges on the complainants.
- iii) To direct the respondents to provide the total rental loss of Rs.24,55,890.41/- that has been incurred by the complainants due to the delay in possession of the unit by the respondents, along with all other facilities, amenities and services as mentioned under the Brochure and Apartment Buyer Agreement and assured at the time of booking.
- iv). To direct the respondents to provide the total loss of interest on rent to the tune of Rs.11,99,417.99/- that has been incurred to the complainants.
- v) To direct the respondents to provide compensation of Rs.23,50,560.00/- towards warehouse storage charges.

hmb
AO

- vi) To direct the respondents to provide compensation of Rs.1,23,35,060.00/- towards loss of opportunity cost.
- vii) To direct the respondents to provide compensation of Rs.5,00,000/- for loss of Pension.
- viii) To direct the respondents to provide the compensation of Rs.5,00,000/- towards the legal costs incurred.
- ix) To grant any other relief as may deem fit and proper in the facts and circumstances of the present case.

7. The respondents contested the complaint by filing a written reply. It is averred that the present complaint is not maintainable or tenable in the eyes of the law as the complainants have approached this Hon'ble Court of Adjudicating Officer with unclean hands and have not disclosed the true, material and relevant facts of the present case. They (respondents) deny each and every statement, averment, submission and contention set forth in the complaint.

8. That the present complaint is barred by the principles of res-judicata and constructive res-judicata. Present complaint has been filed out of sheer greed. No proof has been attached by the


A.O

complainants to substantiate their claim that any loss or damage has been caused to them.

9. That present complaint does not disclose any cause of action and is barred by limitation. The complainants to extract illegal and unlawful benefits from the respondents have entirely set up a different case before this Hon'ble Court to get wrongful gains. The complainants are not genuine consumers. The respondent company completed the project and offered the possession of the allotted apartment vide letter dated 14.07.2018 wherein the complainants were requested to pay their outstanding dues i.e. 70% of consideration amount as per the payment plan opted by them and take possession of the apartment. All the demands were raised as per the agreed terms of the Buyers agreement and the payment plan opted by the complainants.

10. Denying all averments, respondents ~~have~~ ^人 prayed for dismissal of the complaint.

11. Both of the parties filed affidavits in support of their claims.

12. I have heard learned counsels appearing for both of parties and perused the record.

Sub
AO

13. Learned counsel for respondents contended that when complainants have already been allowed refund of the amount, same are not entitled for any compensation. Learned counsel explained that although there was some delay in offering possession of subject unit, it was not fault of her clients i.e respondents. After construction was complete, the respondents applied for NOC from Director, Fire Services (Haryana), Panchkula, on 19.07.2017. The Department put a condition that the respondent ~~had~~ to provide double staircase to each of towers/buildings within one year from the date of approval. According to learned counsel, due to force majeure, possession could not be handed over to allottees in time. Learned counsel referred order of the Authority dated 29.10.2024, where aforesaid complaint filed by present complainants was disposed of. As per learned counsel, the Authority did not find fault in her clients and hence allowed refund of amount, after deducting 10% of sale consideration.

14. On the other hand, learned counsel for complainants stated vehemently that his clients were left with no option but to ask for refund of the amount, when promoters/respondents failed

dnb
AO

to complete the construction and to hand over possession within agreed time. According to him, even if OC was received by the respondents ^{it} ~~which~~ was a conditional OC. Moreover, there was no electricity connection in the project/apartment, his clients could not suppose to take possession of an apartment, where there were no basic facilities like electricity.

15. As noted by the Authority in afore-mentioned order, due date of possession as per BBA was 01.01.2017. Although occupation certificate was obtained vide letter dated 27.07.2017 from the Competent Authority, offer of the possession was sent to the allottees/complainants through letter dated 14.07.2018. The Authority further noted that although respondent applied for OC in January, 2017, Director, Town and Country Planning, Haryana on 27.07.2017 authorized the respondent to allow allottees to occupy the booked residential apartments **after fulfilling certain requirements thereunder**. Apparently, this OC was subject to fulfilment of certain requirements. In the other words, it was a conditional OC. Further, the Authority refers provisional NOC dated 19.07.2017 issued by Director, Fire Services (Haryana), Panchkula. The Director had put a condition that the respondent has to

DRB
AO

provide double staircase to each towers/buildings within one year from the date of approval. The respondent is stated to have applied for electricity connection on or about 30.12.2016 but electricity meter was installed on or about 20.08.2018 by DHBVN. In this way, when there was no electricity connection in the apartment before 20.08.2018 the allottees i.e. complainants could not have been expected to take possession of allotted unit. Meaning that the apartment was incomplete.

16. In the circumstances described above, I find weight in the plea of learned counsel for complainants stating that neither OC was a proper OC nor offer of the possession even ^{was} being served upon the complainants was a valid offer of the possession.

17. According to Section 18 (1) of The Act of 2016, if the promoter fails to complete or is unable to give possession of an apartment, plot or building, -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein or-----,

(b) -----.

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the

DRB
AO

amount received by him in respect of that apartment, plot or building, as the case may be, with interest-----, **including compensation, in the manner as provided under this Act.**

18. Use of words, "he shall be liable on demand to the allottees" makes it abundantly clear that when promoter fails to complete or unable to give possession of an apartment in accordance with the terms of the agreement for sale, same is liable to refund the amount along with interest and also compensation, in the manner as provided under the Act, subject that refund is demanded by the allottee. Admittedly, apartment/unit in question was not completed within agreed time, [✓] When complainants demanded for refund of the amount, the respondent had no option but to refund the amount along with interest and also compensation. A perusal of mandate given by the Apex Court in case ***M/s. New-tech Promoters and Developers Pvt. Ltd. vs State of UP and others, Civil Appeal No. 6745-6749 of 2021***, verifies this fact i.e. respondent had no option but to refund along with interest and compensation, when demanded by the allottee if offer of possession is not given within agreed time. No Court including Authority had any option but to allow refund of the amount, along

halo
AD

with interest, if afore-mentioned conditions are fulfilled. The order of the Authority where respondent was allowed to deduct 10% of sale consideration appears to be in-teeth with ^{and contrary to} _↑ said findings of the Apex Court.

19. This Forum is conscious of Rule 28 (m) of The Haryana Real Estate (Regulation and Development) Rules, 2017, which says that if the complaint in form 'CAO' is filed before the adjudicating officer for adjudging quantum of compensation, complaint shall be admissible from the stage of concluding inquiry by the Authority that respondent being promoter has violated or contravened provisions of the Act..... Rules of 2017 were framed on the basis of power delegated by the Parliament under Act of 2016. When the finding of Authority is contrary to the Act of Parliament, in such a circumstance, in my opinion aforesaid rule will not come in way of applying law made by the Parliament i.e. Act of 2016. Moreover, as mentioned above, this order is contrary to finding given by the Apex Court in ***M/s. New-tech Promoters and Developers Pvt. Ltd.'s case***, as described above.

20. When it is well established on record that promoter/respondent failed to hand over possession of subject

DNB
AO

unit as per agreement of sale, in view of Section 18 (1) of Act of 2016 apart from refund of the amount, allottees-complainants are entitled for compensation.

21. One more issue agitates in my mind i.e. when promoters failed to complete the project and to offer possession of subject unit to the complainants till due date of possession and the latters did not demand refund of their amount immediately, they filed complaint before the Authority seeking refund of their amount after respondent offered possession, could they be presumed to have condoned delay on part of promoters or can be stopped from claiming refund of their amount?

22. After ruminating this question in mind, I found reply in negative. There can be no estoppel against law. Even otherwise, as discussed above, being subject to certain conditions, offer of possession by respondents was not a legally valid offer.

23. Section 72 of the Act provides the factors, which are to be taken in account, while determining amount of compensation. Apparently, when respondents received sale consideration (though in part) but failed to fulfill its promise, they gained undue profit from money of complainants. However, complainants did not

112
AO

adduce any reliable evidence to prove as what loss of appreciation, has been caused to them, but for want of such evidence, claim of compensation cannot be blown away, when the complainants are found entitled for compensation. According to complainants, the due date of possession of their unit was 01.01.2017. Possession was never handed over to them (complainants), but ultimately after filing a complaint before the Authority, they (complainants) got an order of refund dated 29.10.2024. **As per AI Overview, the residential real estate market in Gurgaon (Gurugram) has witnessed a massive surge in prices between January 1, 2017 and October 29, 2024, (date of order of refund by the Authority). transitioning from a sluggish period to one of the highest-appreciating markets in India..... Overall 5-7-year Growth: According to reports, average housing prices in Gurugram surged by nearly 160%.**

24. The project where the complainants had booked their unit i.e. Greenburg, Sector 86, Gurugram, is near to Dwarka Expressway. It can be presumed that amount paid by complainants to the respondents in purchase of subject unit, if was invested in some other similar project, it would have at-least doubled till the

Wk
AO

date of order of refund i.e. 29.10.2024. Admittedly, complainants paid a sum of Rs.40,16,977/- out of total basic sale consideration of Rs.1,02,64,540/-. Said amount has already been ordered to be refunded by the Authority. The complainants are thus allowed a sum of Rs.40,16,000/- (rounded up) to be paid by the respondents as loss of appreciation caused to them (complainants).

25. When complainants could not get their dream unit despite making payment of about 40% of sale consideration, all this apparently caused mental harassment and agony to them (complainants). Same are allowed a sum of Rs.1,00,000/- as compensation for mental agony and harassment. The complainants have sought cost of litigation of Rs.5,00,000/- which appears to be excessive. No court fee is required to be paid to the Authority, while filing a complaint. Even than as the complainants were represented by an advocate during proceedings of this case, same are allowed a sum of Rs.50,000/- as cost of litigation.

26. When compensation has been awarded for loss of appreciation, there is no reason to allow compensation on other grounds, as claimed by the complainants. Request in this regard is declined.

*JW
AO*

27. The amounts mentioned above be paid by the respondents jointly and severally, to the complainants along with interest at rate 10.85% per annum from the date of this order, till realization of amount. Joint liability of respondents is not controverted on behalf of any of respondents, during arguments.

28. Complaint is thus disposed of. File be consigned to the record room.

Announced in open court today i.e. on 11.02.2026.


(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate
Regulatory Authority,
Gurugram.