

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.182 of 2025

Date of Decision: April 24, 2026

TDI Infrastructure Ltd. Registered office at Mahindra Towers,
Unit No.- 2A, 2nd Floor, Bhikaji Cama Place.

...Appellant

Versus

1. Rachna Grover wife of Sh. Sanjay Grover
2. Sanjay Grover son of Sh. J.C. Grover
Both residents of I-159, Ashok Vihar, Ground Floor, Phase-I,
New Delhi-110052.
3. Haryana Real Estate Regulatory Authority, Office at Mini
Secretariat, New Office Block, 2nd and 3rd Floor, Sector-1,
Panchkula, Haryana, 134109.

...Respondents

Coram: **Justice Rajan Gupta** **Chairman**
 Dinesh Singh Chauhan **Member (Technical)**

Argued by: Mr. Shubnit Hans, Advocate, alongwith
 Mr. Anjanpreet Singh, Advocate
 for the appellant-promoter.

 Mr. Ravi Singh, Advocate,
 for respondents No. 1 and 2

 None for respondent No. 3- HRERA-Panchkula.

ORDER

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against the order dated
03.12.2024 passed by the Authority¹ at Panchkula in
Complaint No. 1603 of 2023, whereby the Authority directed
the appellant-promoter to refund to the respondent-allottees

¹ The Haryana Real Estate Regulatory Authority, Panchkula

the amount deposited by them along with interest, i.e., Rs.79,77,516/- under Section 18 of the Real Estate (Regulation and Development) Act, 2016,

2. Factual matrix of the case is that the respondent-allottees were allotted Unit No. T-5/0901, 9th Floor, measuring 1390 sq. feet, in the project "Tuscan Heights" near TDI Mall in TDI City, Kundli, Sonipat. The allotment letter was issued on 18.08.2011 and Apartment Buyer's Agreement was executed on 19.08.2011. As per Clause 30 of the agreement, due date of possession was 19.02.2014. Total sale consideration of the unit was Rs. 37,82,467/-, out of which, the respondent-allottees had paid Rs. 35,42,425/-.

3. It is not in dispute that the appellant issued offer for fit-out possession on 08.12.2017; thereafter issued NOC dated 19.03.2018 and possession certificate dated 26.03.2018. However, Occupation Certificate has not been received till date.

4. The case set up by the appellant before this Tribunal is that since the respondents had signed the NOC/possession documents and had agreed to take possession, they were no longer entitled to seek refund and at best, could claim only delayed possession interest, if any. Learned counsel submits that the Authority erred in allowing refund despite such acceptance of possession.

5. Per contra, learned counsel for the respondents has supported the impugned order and submits that no legally valid offer of possession was ever made as admittedly, Occupation Certificate has not been issued till date. It is argued that any possession letter or certificate issued by the promoter itself, unsupported by Occupation Certificate from the competent

authority, is of no legal consequence. The project thus continues to remain an 'on-going project' and the respondent-allottees, in view of the law laid down by **Hon'ble Supreme Court in "Newtech Promoters and Developers Pvt. Ltd. vs. State of U.P. & Ors."**², have an unqualified right to seek refund.

6. Having heard learned counsel for the parties and perused the record, the question which arises for consideration before this Bench is, whether the respondent-allottees, despite signing possession related documents issued by the promoter, are entitled to seek refund along with interest when admittedly no Occupation Certificate has been granted to the project till date.

7. Certain facts are admitted and undisputed. The due date of possession under the agreement was 19.02.2014. The appellant did not obtain Occupation Certificate by that date. Even when fit-out possession was offered on 08.12.2017 and possession certificate was issued on 26.03.2018, the Occupation Certificate had still not been received. In fact, as per record, Occupation Certificate has not been received till date.

8. The appellant seeks to rely upon NOC dated 19.03.2018 and possession certificate dated 26.03.2018. However, both these documents emanate from the promoter and are not backed by Occupation Certificate issued by the competent authority. Such documents, by themselves, cannot confer legality upon the offer of possession. The so-called possession certificate issued by the appellant-promoter is, therefore, of no consequence in the eyes of law, as it is not

² 2022(1) RCR (Civil) 367

backed by Occupation Certificate. Admittedly, Occupation Certificate has not been received till date.

9. Once this position is accepted, the necessary consequence is that no valid offer of possession has ever been made to the respondents. The mere signing of documents by the allottees, particularly in a situation where the promoter had not fulfilled the statutory requirement of obtaining Occupation Certificate, cannot defeat the substantive right of the allottees. A defective or invalid offer cannot be validated by unilateral paperwork generated by the promoter.

10. The argument that the respondents had agreed to take possession and are, therefore, estopped from seeking refund, deserves rejection. There can be no estoppel against statute. The requirement of a lawful offer of possession backed by Occupation Certificate is fundamental. If the project lacked Occupation Certificate, any purported acceptance by the allottee would not extinguish the statutory remedies available under Section 18 of the Act.

11. It also deserves emphasis that since Occupation Certificate has not been issued till date, the project continues to be an ongoing project. The Authority, while relying upon the judgment of Hon'ble Supreme Court in ***“Newtech Promoters and Developers Pvt. Ltd. vs. State of U.P. & Ors.”***, correctly observed that projects in respect of which completion/occupation requirements remain unmet, fall within the fold of the Act and the allottee has an unqualified right to seek refund where possession is not delivered in terms of the agreement. The case of the respondent-allottees is fully covered by the aforesaid judgment. Relevant paragraph is reproduced hereunder:

“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.”

12. It, thus makes the legal position clear that the unqualified right of the allottee to seek refund under Section 18 is not dependent on contingencies or stipulations once the promoter fails to give possession within the time stipulated under the terms of the agreement. If the allottee does not wish to continue with the project, the promoter is under an obligation to refund the amount on demand with prescribed interest.

13. In the present case, possession was due on 19.02.2014. Even after the lapse of several years, the appellant has failed to obtain Occupation Certificate. The respondents cannot be compelled to remain bound to an incomplete and legally non-compliant project indefinitely. In these circumstances, their decision to withdraw from the project and seek refund along with interest is fully justified.

14. In view of the foregoing discussion, we find no legal infirmity in the impugned order dated 03.12.2024 passed by

the Authority. The appeal is devoid of merit and accordingly stands dismissed.

15. The amount deposited by the appellant/promoter i.e. Rs.79,77,516/- with this Tribunal in order to comply with the provisions of Section 43(5) of the Act, along with accrued interest, be remitted to the Authority at Panchkula for disbursement to the respondent-allottees in accordance with law and Rules.

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

17. File be consigned to records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Dinesh Singh Chauhan
Member (Technical)

April 24,2026/mk