

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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Appeal No.84 of 2020

Date of Decision: 05.12.2022

1. Ms. Megha Gupta d/o Mr. G.P. Gupta

2. Mr. Gopal Prakash Gupta s/o Lt. K.D. Gupta

Both Residents of B-15, Panchsheel Enclave, New Delhi-110017.

Appellant

Versus

Emaar MGF Land Limited, Registered Office: 306-308, Square One, C-2, District Centre, Saket, New Delhi-110017.

Corporate Office: Emaar Business Park, Mehrauli, Gurgaon Road, Sikandarpur Chowk, Sector-28, Gurgaon-122002.

Respondent

**CORAM:**

Shri Inderjeet Mehta,  
Shri Anil Kumar Gupta,

Member (Judicial)  
Member (Technical)

**Argued by:** Shri Sabhay Choudhary, Advocate, learned counsel for the appellants.

Shri Shekhar Verma, Advocate, learned counsel for the respondent.

**ORDER:**

**INDERJEET MEHTA, MEMBER (JUDICIAL):**

Feeling aggrieved by the order dated 17.12.2019 handed down by the learned Haryana Real Estate Regulatory

Authority, Gurugram (hereinafter called 'the Authority'), in Complaint No.CR/4979/2019 titled as "Emaar MGF Land Ltd. vs. Megha Gupta", vide which complaint filed by the respondent/promoter for issuance of the directions to the appellants/allottees to take the possession of the allotted unit, was allowed, the appellants have chosen to prefer the present appeal under Section 44(2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act').

2. The respondent/promoter filed a complaint before the learned Authority alleging that the appellants were allotted unit no.IG-02-GF03, Ground Floor, Tower-2, in the project namely "Imperial Gardens" Sector-102, Gurugram, vide allotment letter dated 27.02.2013, for a total sale consideration of Rs.1,70,38,745/-. As per Clause 14(a) of the "Buyer's Agreement" (hereinafter called 'the Agreement') executed between the parties on 19.04.2013, the possession of the unit was to be delivered within 42 months from the date of start of construction i.e. 11.11.2013 plus grace period of three months for applying and obtaining the Occupation Certificate. The possession of the unit was offered to the appellants on 29.10.2018 after receipt of the Occupation Certificate which was granted on 17.10.2018. Since, the appellants were not coming forward to take over the possession and to pay the

remaining dues, so, the respondent/promoter filed the complaint for issuance of directions to the appellants/allottees to take possession of the unit and also to get the conveyance-deed executed.

3. Upon notice, though, the appellant no.2 - Gopal Prakash Gupta, appeared before the learned Authority and participated in the proceedings, but the appellants did not file any reply to the complaint.

4. After appreciating the material on record, the learned Authority disposed of the complaint filed by the respondent/promoter with the following directions:-

- “i. The complainant-promoter is directed to pay the interest at the prescribed rate i.e. 10.20% per annum for every month of delay on the amount paid by the respondents-allottees from due date of possession i.e. 11.08.2017 till the offer of possession i.e. 29.10.2018 and the arrears of interest accrued so far shall be paid to the respondents-allottees within 90 days from the date of this order.*
- ii. The respondents-allottees are directed to take over the possession of the allotted unit within a period of 1 month from the date of this order.*
- iii. The complainant-promoter is also entitled for charging maintenance charges as per the provisions of the Act.*

*iv. Interest on the due payments from the respondents-allottees shall be charged at the prescribed rate of interest i.e. @ 10.20% p.a. by the promoter which is the same as is being granted to the respondents-allottees in case of delayed possession.”*

5. The appellants felt aggrieved, hence, the present appeal.

6. Though, the appellants/allottees had not filed reply to the complaint preferred by the respondent/promoter before the learned Authority, but, vide interim order dated 11.11.2021, this Tribunal allowed the appellants/allottees to file the reply before this Tribunal and the relevant observations made by this Tribunal in the said interlocutory order dated 11.11.2021 are as follows:-

“19. From the arguments addressed by learned counsel for the appellants, we could perceive that the appellants are more concerned with the fact that the respondent/promoter has not disclosed the pendency of the complaint filed by it before the Hon’ble NCDRC seeking the refund of the amount due to inordinate delay in delivering the possession. The facts regarding the due date for delivery of possession, the date of issuance of the occupation certificate and the date of offer of

*possession are not disputed, so, the material facts are not disputed. The effect of pendency of the complaint before the Hon'ble NCDRC and concealment of this fact by the respondent/promoter is a legal issue which can be dealt with even at the appellate stage. Consequently, the matter between the parties can be decided on merits by this Tribunal even without remanding the case to the learned Authority and that will also avoid any further delay in the matter.*

20. *Thus, in view of our aforesaid discussion, the appellants/allottees are now allowed to file the reply to the complaint with this Tribunal within ten days from the date of uploading this order with advance copy to the learned counsel for the respondent. It is made clear that no further opportunity shall be granted for this purpose."*

7. In compliance of the aforesaid directions given by this Tribunal, the appellants/allottees filed the reply to the complaint preferred by the respondent/promoter and the appellants/allottees have resisted the complaint preferred by the respondent/promoter on the ground that the impugned order had been passed by the learned Authority without giving sufficient opportunity to the appellants/allottees. It has been further alleged that the appellants had also filed a complaint

bearing no.CC/1212/2019 on 08.07.2019 under Section 12 of the Consumer Protection Act, 1986, before the Hon'ble National Consumer Disputes Redressal Commission, New Delhi (for short 'NCDRC'), on the identical facts and circumstances against the respondent/promoter seeking refund of the amount already paid as consideration, along with interest @ 24% per annum from the date of receipt till its realisation and this fact was not disclosed by the respondent/promoter at the time of filing of complaint before the learned Authority.

8. It has been also alleged that the appellants/allottees had also filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called the 'IBC' 2016) seeking initiation of Corporate Insolvency Resolution Process against the respondent/promoter before the Hon'ble National Company Law Tribunal, Principal Bench, New Delhi, (for short 'NCLT') bearing C.P.No.(IB)-2319(PB)/2019 dated 31.08.2019. In the said proceedings, the respondent had admitted in its reply that the date of commencement of construction of the project was 11.11.2013 and due date of delivery of the unit was 11.08.2017. However, the said application had become infructuous under Insolvency and Bankruptcy (Amendment) Act, 2020. In accordance with the said notification, the

appellants along with other home buyers had filed another application bearing C.P.No.(IB)-285(PB)/2021 before the NCLT, Principal Bench, Delhi, to initiate CIRP against the respondent company and the said application is also pending for adjudication. Further, it has been alleged that the present complaint preferred by the respondent/promoter is nothing but a counter blast to the complaint already filed by the appellants before the Hon'ble NCDRC, New Delhi, seeking refund and the application filed by the appellants under Section 7 of IBC, 2016, seeking initiation of CIRP against the respondent/promoter. It has been also alleged that the respondent/promoter had admitted in its reply filed before the Hon'ble NCLT, Principal Bench, that due date of delivery of possession of the unit was 11.08.2017, whereas the respondent/promoter had offer the possession of the unit to the appellants on 29.10.2018 and thus, there was inordinate delay of 14 months in offering the possession of the unit to the appellants/allottees.

9. The appellants have further alleged that they had categorically conveyed to the respondent/promoter vide legal notice dated 20.05.2019 that they intended to withdraw from the project owing to the inordinate delay of more than 14 months in offering the possession of the unit and called for

refund of the amount already paid as consideration along with interest. They have also alleged that the letter dated 29.10.2018 offering the possession of the unit was contrary to the terms and conditions of the Agreement dated 19.04.2013 and the respondent/promoter had illegally raised the demand of Rs.20,95,509/- from the appellants. While denying all other averments taken in the complaint filed by the respondent/promoter before the learned Authority, the appellants have prayed for dismissal of the complaint.

10. We have heard Shri Sabhay Choudhary, Advocate, learned counsel for the appellants, Shri Shekhar Verma, Advocate, learned counsel for the respondent and have meticulously examined the record of the case. Learned counsel for both the parties have also filed their respective written submissions.

11. Initiating the arguments, learned counsel for the appellants contended that the respondent/promoter was required to hand over the possession of the unit by 11<sup>th</sup> August, 2017. After the delay of more than 14 months, the possession was offered to the appellants on 29.10.2018 and they were further asked to make the payment of Rs.20,95,509/-. The said demand was completely whimsical



and arbitrary in nature. The appellants had served the legal notice dated 20.05.2019, seeking refund of the amount already paid, on account of inordinate delay in delivering the possession. Further, it has been contended that the appellants also preferred a complaint bearing CC No.1212/2019 dated 08.07.2019 before the Hon'ble NCDRC, New Delhi, against the respondent/promoter seeking refund of the amount paid by them to the respondent/promoter. The Hon'ble NCDRC had issued notice to the respondent vide order dated 12.07.2019, and the above said complaint is still pending before the Hon'ble NCDRC for adjudication. Further, it has been contended that the appellants had also filed an application under Section 7 of the 'IBC' 2016, before the Hon'ble NCLT, Principal Bench, New Delhi, on 31.08.2019, bearing C.P. No.(IB)-2319(PB)/2019 seeking initiation of Corporate Insolvency Resolution Process against the respondent/promoter. Lastly, it has been submitted that as a counter blast to the aforesaid proceedings initiated by the appellants for refund of the deposited amount, the respondent/promoter filed the present complaint before the learned Authority seeking direction to the appellants to take the possession of the allotted unit. The respondent/promoter had also concealed the material facts from the learned

Authority that the appellants had already filed the complaint before the Hon'ble NCDRC, seeking refund of the amount paid by them to the respondent/promoter, on account of inordinate delay in delivering the possession.

12. Countering this vehemently, learned counsel for the respondent contended that the learned Authority has passed a very balanced order which provided an equal platform to the respondent/promoter as well as to the appellants/allottees for redressal of their respective grievances. The appellants have been awarded interest till delivering possession. He further contended that the appellants had delayed the discharge of their obligations in taking the possession for more than one year, which gave a valid cause of action to the respondent/promoter to file the complaint before the learned Authority. Further, it has been submitted that there is no illegality and irregularity in the impugned order handed down by the learned Authority and the present appeal deserves to be dismissed.

13. We have duly considered the aforesaid submissions.

14. First of all, let the admitted facts be taken note of. Qua the allotted unit bearing no.IG-02-GF03 Ground Floor, Tower-2, in the project namely "Imperial Gardens" Sector-102,

Gurugram, vide allotment letter dated 27.02.2013, for a total sale consideration of Rs.1,70,38,745/-, a 'Buyer's Agreement' was executed between the parties on 19.04.2013. As per Clause 14(a) of the said agreement, the possession of the unit was to be delivered within 42 months from the date of start of construction i.e. 11.11.2013 plus grace period of three months for applying and obtaining the Occupation Certificate and thus the due date of possession was 11.08.2017. The appellants were granted the Occupation Certificate on 17.10.2018 and the possession of the unit was offered to the appellants on 29.10.2018 with demand of Rs.20,95,509/-. A legal notice dated 20.05.2019 was served by the appellants/allottees upon the respondent/promoter seeking refund of the deposited amount. The appellants preferred a complaint before the Hon'ble NCDRC on 08.07.2019 and the notice was ordered to be issued to the respondent on 12.07.2019. The appellants filed an application under Section 7 of the 'IBC' 2016, before the Hon'ble NCLT on 31.08.2019 and reply to the said application was filed by the respondent/promoter on 22.10.2019. The respondent/promoter filed the complaint before the learned Authority seeking direction to the appellants to take the possession of the unit on 19.11.2019. Notice to the appellants in the said complaint was issued on

21.11.2019, and the impugned order was handed down by the learned Authority on 17.12.2019.

15. In the interlocutory order dated 11.11.2021, vide which this Tribunal allowed the appellants/allottees to file reply to the complaint preferred by the respondent/promoter before the learned Authority, it was specifically observed that notice of the complaint was issued to the appellants on 21.11.2019 for appearing on 17.12.2019 and in the said notice itself, the appellants were directed to file reply to the complaint within 10 days, and on failure of the appellants to do so, the complaint was disposed of on 17.12.2019 itself. Since, virtually only one opportunity was given to the appellants to file the reply, so, there was violation of the principle of natural justice, as envisaged under Section 38(2) of the Act.

16. The only bone of contentions between the parties to the present lis before this Tribunal, as observed in para no.19 of the order dated 11.11.2021, is that the effect of the pendency of the complaint before the Hon'ble NCDRC and concealment of this fact by the respondent/promoter is a legal issue which can be dealt with even at the appellate stage.

17. Admittedly, as is explicit from the thorough perusal of the complaint preferred by the respondent/promoter before

the learned Authority, the respondent/promoter has not mentioned the factum of pendency of the complaint preferred by the appellants before the Hon'ble NCDRC. Faced with the situation, learned counsel for the respondent has submitted that though the notice of the complaint preferred by the allottees before the Hon'ble NCDRC was issued on 12.07.2019, but, there is absolutely nothing on the file to suggest that the notice had been duly served upon the respondent/promoter prior to 19.11.2019 when the respondent/promoter had filed the present complaint before the learned Authority.

18. This aforesaid submission of learned counsel for the respondent is not only without substance but is also misconceived. The respondent/promoter has placed on file reply (Annexure A/4) filed by it to the application preferred by the appellants under Section 7 of the 'IBC' 2016, before the Hon'ble NCLT, Principal Bench, New Delhi. At page 47 of the paper-book, in reply (Annexure A/4), in para no.11, the respondent/promoter has specifically pleaded that before filing this application under Section 7 of the 'IBC' 2016, the appellants/allottees had filed a complaint before the Hon'ble NCDRC, New Delhi, on the same cause of action i.e. delay in handing over the possession of the unit GF03 and the appellants/allottees had also sought refund of the sale

consideration paid by them to the respondent/promoter along with interest from the date of signing of the agreement. Thus, from the aforesaid stand taken by the respondent/promoter before the Hon'ble NCLT, while filing reply to the application under Section 7 of the 'IBC' 2016, the respondent/promoter had itself admitted that prior to filing of the above said application on 31.08.2019, the appellants/allottees had already filed a complaint before the Hon'ble NCDRC, New Delhi, on 08.07.2019, in which vide order dated 12.07.2019, the notice was issued to the respondent/promoter. The said reply of the respondent before the Hon'ble NCLT is dated 22.10.2019 and as the complaint before the learned Authority was filed by the respondent/promoter on 19.11.2019, so, the respondent/promoter was very much in the knowledge of pendency of the complaint preferred by the appellants/allottees before the Hon'ble NCDRC and by not mentioning this fact in the complaint dated 19.11.2019, the respondent/promoter has deliberately suppressed the material facts from the learned Authority.

19. The factum of concealment of pendency of the complaint before the Hon'ble NCDRC, at the time of filing of complaint by the respondent/promoter before the learned Authority, has assumed further significance in view of the fact

that, as referred above, only one opportunity was provided to the appellants/allottees to file the reply and on the very first date of hearing i.e. 17.12.2019, the learned Authority allowed the complaint preferred by the respondent/promoter without providing any further opportunity to the appellants/allottees to file the reply, though, vide interlocutory order dated 11.11.2021 passed by this Tribunal, the appellants/allottees were provided the opportunity to file the reply, which was thereafter filed before this Tribunal.

20. Thus, as a consequence to the aforesaid discussion and in view of the fact that the respondent/promoter has suppressed the material facts from the learned Authority at the time of institution of the complaint and the learned Authority, on the first date of hearing, allowed the complaint preferred by the respondent/promoter without providing proper opportunity to the appellants/allottees to file the reply, the present appeal preferred by the appellants is hereby accepted and the impugned order dated 17.12.2019 handed down by the learned Authority is set aside. Consequently, the complaint filed by the respondent/promoter is dismissed.

## Appeal No.84 of 2020

21. The copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority.

22. File be consigned to the record.

Announced:  
December 05, 2022

Inderjeet Mehta  
Member (Judicial)  
Haryana Real Estate Appellate Tribunal,  
Chandigarh

Anil Kumar Gupta  
Member (Technical)

CL

Judgment-Haryana Real Estate Appellate Tribunal