

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.314 of 2019
Date of Decision: 16. 12.2022

Emaar MGF Land Ltd. registered office at #2564, Sector 21,
Panchkula.

2nd Address Corporate Office, Emaar Business Park, MG Road,
Sikandarpur, Sector 28, Gurugram (Haryana) 122 002

...Appellant-Promoter

Versus

Sandeep Singh Gill resident of X 52, Regency Park II, DLF,
Phase IV, Gurugram

...Respondent-Allottee

CORAM:

Shri Inderjeet Mehta
Shri Anil Kumar Gupta

Member (Judicial)
Member (Technical)

Argued by: Ms. Tanika Goyal, Advocate,
Ld. counsel for the appellant.

Shri Arun Sharma, Advocate,
Ld. counsel for the respondents.

ORDER:

ANIL KUMAR GUPTA, MEMBER (TECHNICAL):

The present appeal has been preferred under Section
44(2) of the Real Estate (Regulation and Development) Act 2016
(further called as, 'the Act') by the appellant-promoter against

impugned order dated 16.10.2018 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Ld. Authority') whereby the Complaint No.14 of 2018 filed by the respondent-allottee was disposed of with the following directions:

- i. *"The respondent is duty bound to pay the interest at the prescribed rate i.e. 10.45% for every month of delay of from the due date of possession i.e. 31.11.2013 till the actual date of handing over of the possession i.e. 30.01.2018.*
- ii. *The respondent is directed to pay interest accrued from 31.11.2013 to 30.01.2018 on account of delay in handing over of possession which shall be paid to the complainant within 90 days from the date of decision."*

2. As per averments of the respondent-allottee in the complaint, it was pleaded that the unit no.EPO-08-036 on 8th floor in the project of the appellant-promoter "Emerald Hills", Sector 65, Gurugram measuring 637.6 sq. ft. super area was booked on 05.08.2010 by making a payment of Rs.5,00,000/-. The Office Space Buyer's Agreement (for short, the Agreement) was executed between the parties on 31.01.2011 for total sale consideration of Rs.49,98,998/- and the respondent-allottee paid an amount of Rs.45,14,778/- till the date of filing of the complaint. As per Clause 16(a)(i) of the agreement, the

Appeal No.314 of 2019

appellant-promoter was to provide the possession within 30 months with 120 days grace period and, as such, the due date of delivery of possession comes out 30.11.2013.

3. It was further pleaded that respondent-allottee has paid 99 % amount of the sale consideration towards costs of the unit till 02.08.2017.

4. It was further pleaded that the agreements stipulates that on delay in handing over the possession of the Unit to the respondent-allottee, the respondent-allottee shall be entitled to an interest calculated at 9% per annum, (simple interest) on the amount paid by the respondent-allottee for such a period.

5. It was further pleaded that the appellant has not constructed 3rd basement which is also confirmed through the occupation certificate. The appellant-promoter has breached the agreement. Moreover, as per the construction plan, the appellant-promoter has raised the 4th demand on completion of 3rd basement roof slab whereas, the appellant-promoter has raised the demand alleging stage of construction of 3rd basement roof slab on June 31,2012. The same reflects in the statement of account also. The act of appellant-promoter is illegal and amounts to breach of contract.

6. With the above said pleadings, the respondent-allottee sought the following reliefs in its complaint:

“i. Direct the respondent to pay interest at the prescribed rate for every month of delay till the handing over of possession.

7. The complaint was contested by the appellant-promoter on the ground that the project of the appellant-promoter is not an ongoing project as per rule 2(1)(o). In the present case, the appellant-promoter had applied for an occupation certificate for the said project on 22.05.2017 which is prior to the date of publication of the rules, and hence the project is not an ongoing project.

8. It was further pleaded that in the present case, the application was made to the competent authority on 22.11.2017 and the same was deemed to be granted after 60 days i.e.21.06.2017 which is prior the publication of the HRERA rules.

9. It was further contended that the complaint for compensation and interest under Sections 12, 14, 18 and 19 of the Act is maintainable only before the adjudicating officer.

10. It was further contended that the respondent-allottee being an investor cannot urge before the authority any relief provided under the act as the objects and preamble of the Act clearly state that RERA has been enacted for effective protection of consumers and to protect their interests. Thus, RERA has not been enacted to protect the interest of investors.

The respondent-allottee has only bought the said unit for speculative investment and does not intend to stay in the unit. Since, the respondent-allottee is not an allottee under the Act but an investor, the authority does not have jurisdiction to decide this complaint.

11. It was further pleaded that the respondent-allottee has defaulted in making the payments of the instalments within the time prescribed which resulted in delay payment charges.

12. It was further pleaded that the appellant-promoter has further contended that they have received the occupation certificate on 08.01.2018 and have already issued the letter of possession dated 30.01.2018 for the said commercial unit along with the final payment request letter. However, even after receiving the notice of possession dated 30.01.2018 and various reminders, the respondent-allottee has not made all the payments till date.

13. It was further pleaded that the respondent-allottee is not entitled for the compensation as the respondent-allottee is a defaulter, having delayed making payments in time. The same was also conveyed to the respondent-allottee vide email dated 24.02.2018.

14. It was further contended that despite several adversities, they have completed the construction of the said

project and has already obtained the occupation certificate for the commercial unit and subsequently offered the possession to the respondent-allottee.

15. After controverting all the pleas raised by the respondent-allottee, the appellant-promoter pleaded for dismissal of the complaint being without any merit.

16. The Ld. authority after considering the pleadings of the parties passed the impugned order, the relevant part of which has already been reproduced in the upper part of this appeal.

17. We have heard, Ld. counsel for the parties and have carefully examined the record. The appellant has placed on file written submission on 07.12.2022.

18. In the written arguments, it is contended that the Agreement was executed between the parties on 31.01.2011. The period of delivery of possession as per Clause 16(a)(i) of the agreement is 30 months from the signing of the agreement with grace period of 04 months for applying and obtaining the Occupation Certification. Thus, the due date comes to 30.11.2013. The Occupation Certificate was applied on 26.05.2017 and the same was received on 08.01.2018. The complaint before the Ld. Authority was filed on 16.10.2018. It was contended that the respondent-allottee has still not taken the possession.

Appeal No.314 of 2019

19. It was further contended that in any case, the delayed possession interest on the payments made after due date of possession shall be from the date such payments have been made by the respondent-allottee to the appellant-promoter.

20. It was also contended that the respondent-allottee had been a defaulter and had deliberately failed to make payments on time. The respondent-allottee shall also be liable to pay interest on the due payments which have been paid with delay at the same rate which is the same as is being granted to the respondent-allottee in case of delayed possession charges.

21. With these contentions, it was contended that the present appeal may be allowed and the impugned order dated 16.10.2018 is set aside.

22. Per contra, Ld. counsel for the respondent- allottee contended that this Tribunal has passed orders in various appeals deciding similar issues and, therefore, this appeal may be decided in accordance with orders passed in those appeals.

23. It was further contended that the impugned order dated 16.10.2018 passed by the Ld. Authority is perfectly in order, is as per the Act, Rules and Regulations and contended for dismissal of the appeal being without any merits.

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

25. The undisputed facts of the case are that the unit no.EPO-08-036 on 8th floor in the project of the appellant-promoter "Emerald Hills", Sector 65, Gurugram measuring 637.6 sq. ft. super area was booked on 05.08.2010 by making a payment of Rs.5,00,000/-. The Agreement was executed between the parties on 31.01.2011 for total sale consideration of Rs.49,98,998/- and the respondent-allottee paid a total sum of Rs.45,14,778/- till the date of filing of the complaint. As per Clause 16 (a)(i) of the agreement, the appellant-promoter is to provide the possession within 30 months with 120 days grace period and, as such, the due date of delivery of possession comes out 30.11.2013. The Occupation Certificate was obtained by the appellant-promoter on 08.01.2018. The possession was offered on 30.01.2018. The complaint was filed by the respondent-allottee with the Ld. Authority on 26.02.2018.

26. The appellant has raised the issue of the jurisdiction of the learned authority and some other technical grounds in the grounds of appeal. However, the appellant has not pressed these pleas on account of the Judgment of Hon'ble Apex Court in the case **M/s New Tech Promoters and Developers Pvt.**

Ltd. v. State of UP & others 2021 SCC online SC 1044. So, those issues are not being discussed here.

27. The further argument of the appellant-promoter is that the interest at the prescribed rate on the payment which has been made after the due date of possession i.e. 30.11.2013 shall be payable from the date on which the respective payments have been made after the due date of delivery of possession i.e. 30.11.2013. Interest on all such payments shall be payable to the respondent-allottee from the respective date of such payments. However, the interest on the payments made prior to the due date of delivery of possession shall be payable from the due date of delivery of possession i.e. 30.11.2013.

28. The further argument of the appellant is that the respondent-allottee had not made the payments on time and therefore, shall also be liable to pay interest, on the due payments which have been delayed by the respondent- allottee, at the same rate as is being granted to the respondent-allottee in case of delayed possession charges. This argument of the appellant is as per the definition of interest given in the act and therefore is correct. The appellant promoter is entitled to charge the interest at the same rate on the delayed payments

Appeal No.314 of 2019

as has been awarded to the respondent-allottee as delayed possession charges.

29. No other issue was pressed before us.

30. Thus, keeping in view of our above discussion, the present appeal partly allowed as per the aforesaid observations.

31. The amount of Rs.19,67,318/- 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 Ld. Authority for disbursement to the respondent-allottee, excess amount may be remitted to the appellant, subject to tax liability, if any, as per law and rules.

32. No order as to costs.

33. Copy of this judgment be communicated to both the parties/learned counsel for the parties and the learned Haryana Real Estate Regulatory Authority, Gurugram.

34. File be consigned to the record.

Announced:
December 16, 2022

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

Anil Kumar Gupta
Member (Technical)