

**BEFORE THE HARYANA REAL ESTATE
APPELLATE TRIBUNAL**

Appeal No. 595 of 2019
Date of Decision: 12.10.2022

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

2nd Address:

Corporate Office Emaar Business Park, MG Road,
Sikanderpur, Sector 28, Gurugram-122002, Haryana.

...Appellant-Promoter

Versus

1. Rajan Walia;
2. Harminder Kaur Walia

Both the residents of Flat No.7B, Hibiscus Avenue, Near
Baal Square, Sector 50, Gurugram (Haryana)

...Respondents-Allottees

CORAM:

**Shri Inderjeet Mehta,
Shri Anil Kumar Gupta,**

**Member (Judicial)
Member (Technical)**

Argued by: Shri Kunal Dawar, Advocate,
Ld. counsel for appellant-promoter.

Shri Tushar Bahmani, Advocate,
Ld. counsel for respondents-allottees.

ORDER:

Anil Kumar Gupta, Member (Technical):

This appeal has been preferred by the appellant-
promoter against order dated 20.09.2018 passed by the Ld.
Haryana Real Estate Regulatory Authority, Gurugram

(hereinafter called 'the Authority'), whereby complaint No.161 of 2018 filed by the respondents-allottees was disposed of by issuing the following directions: -

- “(i) The respondent is duty bound to hand over the possession of the said unit by 31st December, 2018 as committed by the respondent.*
- “(ii) The respondent is duty bound to pay the interest at the prescribed rate i.e. 10.45 % for every month of delay from the due date of possession i.e. 11.08.2017 till the actual date of handing over of the possession.*
- “(iii) The respondent is directed to pay interest accrued from 11.08.2017 to 20.09.2018 on account of delay in handing over of possession to the complainants within 90 days from the date of decision and subsequent interest to be paid by the 10th of every succeeding month.”*

2. As per the averment in the complaint, the respondents-allottees were allotted unit No.IG-04-1604, 16th Floor, Tower/Building No.'04' measuring 2000 Sq. ft. in the project "Imperial Gardens", Sector 102, Gurugram (Haryana) being developed by the appellant-promoter. The Buyer's Agreement (for short, 'the Agreement') was executed between the appellant-promoter and respondents-allottees on 03.05.2013. As per statement of account dated 11.06.2018,

the total sale consideration of the unit is Rs.1,50,50,027/- out of which the respondents-allottees had paid an amount of Rs.1,42,35,569/- till the filing of the complaint. As per Clause 14(a) of the Agreement, the appellant-promoter was to hand over the possession of the unit to the respondents-allottees within a period of 42 months from the date of start of construction plus grace period of three months. The date of start of construction is 11.11.2013. Therefore, the due date of delivery of possession as per Clause 14(a) comes out to 11.08.2017. The appellant-promoter failed to offer the possession by the due date i.e. 11.08.2017, therefore, the respondents-allottees filed a complaint before the learned Authority for seeking the following relief:

- “i. Direct the respondent to refund the entire amount of sale consideration deposited till date with them by the complainants i.e. Rs.1,42,35,569/- along with interest @ 24% from the date of provisional allotment i.e. on 27.02.2013 till its realization of the payment and cancel the allotment upon entire refund.*
- ii. Direct the respondent to pay Rs.1,00,000/- as compensation to the complainants for causing mental agony.*
- iii. Direct the respondent to pay Rs.50,000/- as litigation expenses.”*

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3. The complaint was resisted by the appellant primarily on the grounds of jurisdiction of the Ld. authority and on some other preliminary and technical grounds.

4. It was pleaded that the complaint for interest and compensation under section 12,14,18 and 19 is maintainable only before the adjudicating officer and not before the ld. Authority.

5. It was pleaded that the complaint has not been signed by any of the two respondents-allottees and is also not supported by any proper affidavit with proper verification. The respondents-allottees have not filed the complaint with clean hands.

6. It was further pleaded that the statement of objects and reasons as well as the preamble of the said Act clearly states that the Act is enacted for effective consumer protection and to protect the interest of consumers in the real estate sector. The Act has not defined the term consumer, therefore the definition of consumer as provided under the consumer protection Act,1986 has to be referred for adjudication of the present complaint. The complainants, who are already the owner of Resident of A-01/901, Sahara Grace apartment, M.G. Road, Gurugram (address mentioned in the personal details form and buyer's agreement); A-803,

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pilot Court, Essel Towers, Gurugram (address mentioned in the conveyance deed of A-01/901 Sahara Grace apartment, M.G. Road, Gurugram); Flat no. 7-B, The Hibiscus, Building no. 6, Hibiscus Avenue, Sector 50, Gurugram (address mentioned in the present complaint); and even as per their passports, the complainants are British citizens, are investors, having invested in 2 apartments (unit number IG-04-1604 for which complainants have been filed separate complaint number as CR/162/2018 in the 'Imperial Gardens project of the appellants).

7. It was further pleaded that the respondents-allottees are defaulters having deliberately failed to make the payments of various installments within the time prescribed, which resulted in delay payment charges, as reflected in the statement of account dated 18.02.2018 and 11.06.2018. The current outstanding amount as on 25.05.2018 is Rs.2,861/-.

8. It was further pleaded that from the date of booking till the filing of the present complaint for more than six years, respondents-allottees had never ever raised any issue whatsoever and on the contrary the respondents-allottees kept on making the payment of installments, though not within the time prescribed, resulted in delay payment charges.

9. It was further pleaded that despite several adversities, the appellant has continued with construction of the project and is in the process of completing the construction of the project and should be able to apply the occupation certificate for the apartment in question by 31.12.2018 (as mentioned at the time of registration of the project with RERA).

10. It was pleaded that the respondents-allottees have concocted a false story to cover up their own defaults of having deliberately failed to make the payments of dues within the time prescribed which resulted in delay payment charges and have now raised false and frivolous issues and have filed the present complaint on false, frivolous and concocted grounds. This conduct of the respondents-allottees clearly indicate that the respondents-allottees are mere speculators having invested with a view to earn quick profit and due to slow down in the market conditions, the respondents-allottees have failed to perform their contractual obligations of making timely payments.

11. It was further pleaded that the Ld. Authority is deprived of the jurisdiction to go into the interpretations of, or rights of the parties inter-se in accordance with the apartment buyer's agreement signed by the respondents-allottees. It is matter of record that no such agreement as is

referred under the provisions of the said Act or said rules has been executed between the complainants and the respondents. Rather, the agreement that has been referred to is the buyer's agreement dated 03.05.2013 which was executed much prior to coming into force of the said Act and said Rules.

12. We have heard Ld. counsel for the parties and have carefully gone through the record of the case.

13. Initiating the arguments, Ld. counsel for the appellant-promoter contended that all technical grounds such as jurisdiction, retroactivity etc. taken in the appeal have already been settled by the judgment of Hon'ble Apex Court in case of **M/s Newtech Promoters and Developers Pvt. Ltd. v. State of UP & others 2021 SCC Online SC 1044**, and therefore, is not pressing those grounds in this appeal. The only limited issue in the present appeal is left to the extent that the delayed possession interest may be allowed to the respondents-allottees up to the date of offer of possession as against allowed by the Ld. Authority till handing over of the possession.

14. It was further contended that the respondents-allottees have sought the relief of refund along with interest

and compensation and, as such, the delayed possession interest has been wrongly granted by the Ld. Authority.

15. It was further contended that after the order of Ld. Authority passed on 20.09.2018, the occupation certificate (for short, 'OC') was issued on 17.10.2019, the appellant offered possession of the unit to the respondents-allottees vide offer of possession letter dated 20.11.2019 and was asked to complete and submit the documentation required for conveyance deed and deposit a sum of Rs 22,25,849/- as detailed in the annexure attached with the offer of possession letter on or before 23rd December, 2019 to enable the appellant to initiate the process of hand over of the unit to respondents-allottees. The copy of 'OC' and offer of possession letter along with annexure have been supplied vide a separate application MA-123 of 2021 dated 19.04.2021 to this Tribunal.

16. He further contended that after the offer of possession on 20.11.2019, the appellant wrote many letters to the respondents-allottees to take over the possession, but they never submitted the above said documents and didn't make any payment and never came to take the physical possession of the unit.

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17. With these pleas, he contended that the respondents-allottees are only entitled for delayed possession interest up to period of offer of possession i.e. 20.11.2019 and prayed for allowing the appeal to that extent.

18. Per contra, Ld. counsel for the respondents-allottees contended that the respondents-allottees are interested in possession of the unit and are not pursuing the case of refund and compensation. the Ld. Authority vide the impugned order, has granted the relief of delayed possession interest till handing over the possession of the unit which is correct and is as per the provisions of act and under the present facts and circumstances of the case.

19. It was further contended that in para no.24 of the impugned order dated 20.09.2018, it is recorded that the appellant-promoter has stated that the project is almost complete and they will hand over the possession of the unit by December, 2018. Also, in the impugned order, it is mentioned that the appellant-promoter is duty bound to hand over the possession of the said unit by 31st December, 2018 as per its commitment. However, the offer of possession was issued 20.11.2019, but, till date, the actual possession has not been given to the respondents-allottees by the appellant-promoter.

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20. He further contended that as per the statement of account dated 11.06.2018 the total sale consideration is Rs 1,50,50,027/- and the respondents-allottees have already paid an amount of 1,42,35,569/- till the filing of the complaint. The appellant has deposited an amount of Rs.16,54,720/- as delayed possession interest from the deemed date of possession of the unit till the date of the impugned order dated 20.09.2018 as per the award of the impugned order to comply with provisions of Section 43(5) of the Act. The amount has further increased in favor of the respondents-allottees on account of further delay of not handing over of the possession. This clearly shows that much more amount was payable to the respondents-allottees than payable by them to the appellant-promoter, even then the possession of the unit still has not been handed over to the respondents-allottees. Therefore, the respondents-allottees are entitled for delay possession charges till handing over of the possession.

21. Ld. counsel for the respondents-allottees has further contended that they wrote many letters for possession of the unit but the same was not handed over to him, pending payment as demanded by the appellant-promoter. The respondents-allottees had already paid the entire consideration amount and huge payment of delay

possession charges as awarded by the Ld. Authority were due to be paid to the respondents-allottees.

22. It was further contended that as per the statement of account as on dated 20.06.2019 appended with this appeal (available at page no. 431 of the copy of the paper-book) an amount of Rs.21,959/- payable to the respondents-allottees has been indicated by the appellant themselves.

23. With these contentions he contended that the appellant-promoter is not entitled for any relief and prayed for dismissal of the appeal.

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

25. The respondents-allottees were allotted unit No.IG-04-1604,, 16th floor, tower/block No.'04' measuring 2000 Sq. ft. in the project "Imperial Gardens", Sector 102, Gurugram (Haryana) being developed by the appellant-promoter. The Buyer's Agreement was executed between the appellant-promoter and respondents-allottees on 03.05.2013. The total sale consideration of the unit is Rs.1,50,50,027/-(as per statement of account dated 11.06.2018) out of which the respondents-allottees had paid an amount of Rs.1,42,35,569/- till the filing of the

complaint. As per Clause 14 (a) of the Agreement, the appellant-promoter was to hand over the possession of the unit to the respondents-allottees within 42 months from the date of start of construction plus grace period of three months. The date of start of construction is 11.11.2013, therefore, the due date of delivery as per Clause 14(a) comes out to 11.08.2017. The appellant-promoter failed to offer the possession by the due date i.e. 11.08.2017, therefore, the respondents-allottees filed a complaint before the learned Authority for refund along with interest and compensation. However, the learned authority has granted delayed possession interest for the period from the schedule date of handing over the possession i.e 11.08.2017 till handing over the possession.

26. Ld. counsel for the appellant has stated that the appellant-promoter is not pressing any other ground taken in the appeal except that of the period of the delayed possession charges as all other grounds, such as jurisdiction, retroactivity etc. has been duly settled by the Hon'ble Apex Court in case of M/s Newtech Promoters case (Supra).

27. The total sale consideration of the unit allotted to the respondents-allottees is Rs.1,50,50,027/-as per statement of account dated 11.06.2018 out of which the

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respondents-allottees had already paid an amount of Rs.1,42,35,569/- till the filing of the complaint. The appellant-promoter offered the possession of the unit vide offer of possession letter dated 20.11.2019 along with demand of Rs.22,25,848/- on various account. The learned authority awarded delayed possession interest at the prescribed rate i.e. 10.45% for every month of delay from the due date of possession i.e. 11.08.2017 till handing over the possession. The offer of possession was issued on 20.11.2019. Therefore, the appellant was to pay an amount of Rs.33,90,951.0 to the respondents-allottees as delayed possession interest at the prescribed rate i.e. @ 10.45% per annum on the amount already paid by them on the date of offer of possession. This clearly shows that more amount was payable to the respondents-allottees than payable by them to the appellant-promoter. As per the offer the possession letter, the process of handing over of the unit is to be only initiated by the appellants on the deposit of the demanded amount of Rs.22,25,848/- and submission of conveyance deed papers. Therefore, it was not proper on the part of the appellant to ask for any further amount with the offer of possession. The possession could have been offered subject to the final decision of this appeal. Thus, the offer of possession letter dated 20.11.2019 is not a valid offer of

possession. Therefore, we find nothing wrong in the impugned order of the learned authority for grant of delay possession interest at prescribed rate @ 10.45% till the handing over the possession on the amount deposited by the respondent- allottees.

28. Thus, keeping in view our aforesaid discussion, the appeal filed by the appellant-promoter is dismissed with the observations that the appellant will immediately allow possession of the unit to all the respondents-allottees after submissions of all the requisite documents as desired in the offer of possession within two months after passing of this order.

29. No other issue was raised before us.

30. The respondents-allottees have still not been provided the possession of the unit. An amount of Rs.33,90,951.0 was payable by the appellant as delayed possession interest upto the date of offer of possession. A further amount on account of delay possession interest at the prescribed rate of 10.45% per annum on the amount already paid by the respondents-allottees has accrued from the date of offer of possession till the date of this order in favor of the respondent allottees which is more than the amount demanded by the appellant from the respondents-

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allottees as per the offer of possession i.e. Rs.22,25,848/-.
Therefore, the amount of Rs.16,54,720/- deposited by the appellant-promoter with this Tribunal as pre-deposit to comply with the provisions of Section 43(5) of the Act, along with interest accrued thereon, be sent to the Ld. Authority for disbursement to the respondents-allottees, subject to tax liability, if any, as per law and rules.

31. No order as to costs.

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

33. File be consigned to the record.

Announced:
October 12, 2022

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

Anil Kumar Gupta
Member (Technical)

Manoj Rana