

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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Appeal No. 341 of 2021  
Date of Decision:02.02.2023

Emaar India Limited (Formerly Known as Emaar MGF Land Limited), 306-308, 3<sup>rd</sup> Floor, Square One, C-2, District Centre, Saket, New Delhi-110017.

Appellant

Versus

Shilpi Sharma, B-184, Fateh Nagar, New Delhi.

Respondent

**CORAM:**

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

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

**Argued by:** Shri Kunal Dawar, Advocate,  
Ld. counsel for the appellant.

Shri Sanjeev Sharma, Advocate,  
Ld. counsel for the respondent.

**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 26.03.2021 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Ld.

Authority) whereby the Complaint No. 1953 of 2019 filed by the respondents-allottees was disposed of with the following directions:

- i. The respondent is duty bound to pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession is 22.05.2014 till the handing over of possession. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.*
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.*
- iii. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.*
- iv. Interest on the delay payments from the complainant shall be charged as the prescribed rate i.e. 9.30% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges."*

2. It was pleaded by the respondent-allottee in the complaint that she booked a unit bearing no PH4-78-0402, 4<sup>th</sup> floor, block 78, measuring 1950 sq. ft, in the project of the appellant "Palm Hiils", Sector 77, Gurugram, by payment of booking amount of Rs. 5,00,000/- on 15.07.2010. The Buyer's

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Agreement was executed between the parties on 28.08.2010. As per the statement of account dated 06.10.2020, the respondent allottee had paid an amount of Rs. 81,65,246/- against a total sale consideration of Rs. 87,49,898/-. As per clause 11(a) of the buyer's agreement dated 28.08.2010 the respondent is to handover the possession of the unit within a period of 33+3 months from the date of start of construction, subject to certain limitations as provided in the buyer's agreement and timely compliance of the provisions of the buyer's agreement by the respondent-allottee. The respondent-allottee and the appellant also agreed to a grace period of 3 months for applying occupation certificate in respect of the unit after the said period of 33 months. On 22.05.2011, the construction commenced on the site. The respondent-allottee had paid 95% of the total amount of sale consideration as per the payment schedule i.e. Rs. 81,65,246/- as demanded by the appellant. As per the buyer's agreement dated 28.08.2010, the appellant was required to handover the actual physical possession of the unit on or before 22.05.2014 which includes 3 months' time of grace period after the expiry of 33 months from the start of construction. But at the site of the said project, the construction work was not even 50% completed of the total construction work. There is a delay in completion of the project by the appellant which amounts to breach of the terms and conditions of buyer's agreement.

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

*“i. Direct the respondent to pay delay interest at prescribed rate for delay in handing over of the possession till actual handing over of possession of the unit.*

*ii. Direct the respondent to handover the actual possession of the unit in dispute to the complainant.”*

4. The complaint was contested by the appellant on the grounds that the respondent-allottee has filed the present complaint seeking compensation and interest for the alleged delay in delivering possession of the unit booked by appellant. The complaints pertaining to refund, compensation and interest are to be decided by the Adjudicating Officer under Section 71 of the Act read with rule 29 of the Rules and not by the ‘Authority’.

5. It was further pleaded that the respondent-allottee, in pursuance of the application form dated 20.06.2010, was allotted a unit bearing no. PH4-78-0402, located on the 4<sup>th</sup> floor, in the project vide provisional allotment letter dated 19.07.2010. The respondent consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question. The respondent-allottee further undertook to be bound by the terms and conditions of the application form. Thereafter, buyer’s agreement dated

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28.08.2010 was executed between the respondent-allottee and the appellant. It is pertinent to mention that the buyer's agreement was executed voluntarily and consciously by the respondent-allottee after reading and understanding the terms and conditions stipulated therein to her full satisfaction.

6. It was further pleaded that clause 13 of the buyer's agreement provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement. In case of delay caused due to non-receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other amount shall be payable to the allottees. It was further pleaded that the respondent-allottee by way of instant complaint are demanding interest and compensation for alleged delay in delivery of possession. The delayed possession charges are compensatory in the nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement.

7. It was further pleaded that that despite there being a number of defaulters in the project, the appellant itself infused funds into the project and has diligently developed the project in question. The appellant pleaded that an application dated

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21.02.2019 was submitted to the competent authority for occupation certificate which was thereafter granted on 24.12.2019 in favour of the appellant.

8. It was further pleaded that the appellant had offered possession of the unit in question to the respondent-allottee vide letter of offer of possession dated 07.01.2020. The respondent-allottee was called upon to remit balance payment including delayed payment charges and to complete the formalities/documentation necessary for handover of the unit to her. However, the respondent-allottee has consciously refrained from obtaining possession of the unit in question.

9. It was further pleaded that the project has got delayed on account of following reasons which were/are beyond the power and control of the appellant. Firstly, the National Building Code was revised in the year 2016 and in terms of the same, all high-rise buildings (i.e. building having area of less than 500 sq. mtrs. and above), irrespective of area of each floor, are now required to have two staircases. The appellant has taken a decision to go ahead and construct the second staircase. Thereafter, upon issuance of the occupation certificate, possession of the apartment has been offered to the respondent-allottee. Secondly, the appellant had to engage the services of Mitra Guha, a reputed contractor in real estate, to provide multi-level car parking in the project. The said contractor started

raising certain false and frivolous issues with the appellant due to which the contractor slowed down the progress of work at site. Any lack of performance from a reputed contractor cannot be attributed to the appellant as the same was beyond its control.

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

11. 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.

12. We have heard, Ld. counsel for the parties and have carefully examined the record. The appellant during the arguments in this case also submitted written submission on 19.01.2023.

13. Initiating the arguments, it was contended by the Ld. counsel for the appellant that the Buyers Agreement between the parties was executed on 28.08.2010. As per clause 11(a) the agreement, the period of delivery of possession is 33 months from date of start of construction plus 3 months grace period for applying and obtaining the occupation certificate and therefore the due date of delivery of possession comes out to be 22.05.2014. The Occupation Certificate was applied on

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21.02.2019 and was issued by the competent authority of Town Country Planning department, Haryana on 24.12.2019. The offer of possession was issued on 07.01.2020.

14. It was further contended that the Id. Authority has allowed the interest on the whole of the amount paid by the respondent-allottee from the due date of delivery of possession i.e. 22.05.2014. The interest on the amount paid by the respondent-allottee after the due date of possession should be from the date of payment of the respective instalments paid by the respondent-allottee. The respondent-allottee shall be entitled for delay possession interest at the prescribed rate of interest from the date 22.05.2014 only for the payment received up to that date. The interest, at the prescribed rate of the payments which has been made after the due date of possession i.e. 22.05.2014 shall be payable from the date on which the respective payments have been made.

15. It was further 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 late by her at the same rate as is being granted to the respondent-allottee in case of delayed possession charges.



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16. It was further contended that as per Section 19 of the Act, it is obligatory on the allottee to make payments of the amounts prescribed under the agreement and is under obligation to obtain physical possession of the unit within a period of two months from the date of issuance of the occupation certificate pertaining to the said unit and therefore, the order of the Ld. Authority that the appellant is to pay interest at the prescribed rate till handing over of the possession of the unit in question should be set aside.

17. With these contentions, it was contended that the present appeal may be allowed and the impugned order dated 26.03.2021 may be set aside.

18. 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.

19. It was further contended that the impugned order dated 26.03.2021 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.

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

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21. The respondent-allottee booked a unit no PH4-78-0402, 4<sup>th</sup> floor, block 78, measuring 1950 sq. ft, in the project of the appellant “Palm Hiils”, Sector 77, Gurugram, by payment of booking amount of Rs. 5,00,000/- on 15.07.2010. The Buyer’s Agreement was executed between the parties on 28.08.2010. As per the statement of account dated 06.10.2020, the respondent-allottee has paid an amount of Rs. 81,65,246/- against the total sale consideration of Rs. 87,49,898/-. The Statement of Account dated 06.10.2022 indicating the demands raised by the appellant and paid by the respondent- allottee is reproduced as below:-

Sr. No.	Description	Demand		Collection		
		Date	Amount (Rs.)	Date	Receipt/CN /DN No.	Amount (Rs.)
1.	Booking Amount	20-Jun-10	500,000			
2.	Booking Receipt(Cheque)			24-Jun-10	543847	500,000
3.	Receipt (Cheque)			23-Aug-10	543856	723,450
4.	Receipt(Cheque)			27-Aug-10	543855	556,592
5.	On Booking & Within 45 days	29-Aug-10	918,317			
6.	CREDIT Memo (Subvention)			04-Sep-10	12682	87,244
7.	Receipt(Dd)			10-Sep-10	032786	617,151
8.	Within 60 days	13-Sep-10	1,056,120			
9.	CREDIT Memo (Subvention)			14-May-11	16375	72,615
10.	Receipt (Cheque)			17-May-11	657978	40,690
11.	Receipt(Dd)			17-May-11	086604	983,977
12.	Receipt (Cheque)			17-May-11	657977	32,139
13.	Start of construction	22-May-11	1,056,592			
14.	Receipt(Cheque)			14-Aug012	273019	1,495,158
15.	Completion of 50% of Structure	28-Aug-12	1,456,592			
16.	Receipt(Cheque)			20-Mar-13	343644	1,460,211
17.	Completion of Structure	31-Mar-13	1,408,789			
18.	Receipt (Cheque)			04-Sep-13	971205	12,236
19.	Service tax on car park	06-Sep-13	12,360			
20.	Credit Memo (TDS Certificate-XXRTDVH)			31-Dec-13	404703	124
21.	Receipt (Dd)			17-Apr-14	507150	365,052
22.	Completion of Brickwork	25-Apr-14	352,197			
23.	Receipt(Dd)			19-May-14	117244	603,761
24.	ST Applicable on Inst # 4 (Completion of 50% of Structure)	25-May-14	0			
25.	ST Applicable on Inst # 5(Completion of Structure)	25-May-14	0			
26.	ST Applicable on Inst # 6 (Completion of Brickwork)	25-May-14	0			
27.	ST Applicable for Cheque # 543656	25-May-14	19,254			
28.	ST Applicable for Cheque # 543855	25-May-14	8,597			

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29.	ST Applicable for Cheque # 032786	25-May-14	10,639			
30.	ST Applicable for Cheque # 657978	25-May-14	1,021			
31.	ST Applicable for Cheque # 0866604	25-May-14	27,315			
32.	ST Applicable for Cheque # 657977	25-May-14	3,001			
33.	ST Applicable for Cheque # 273019	26-May-14	38,566			
34.	ST Applicable for Cheque # 343644	25-May-14	51,422			
35.	ST Applicable for CM # 12682	25-May-14	2,190			
36.	ST Applicable for CM # 16375	25-May-14	801			
37.	ST Applicable for Cheque #507150	25-May-14	12,855			
38.	ST Applicable for Cheque # 117244	25-May-14	25,463			
39.	Completion of External Plaster	28-May-14	578,296			
40.	ST Applicable on Inst # 7 (Completion of External Plaster)	28-May-14	0			
41.	Receipt (Cheque)			26-Jun-14	241622	533,046
42.	Completion of Internal Tile Flooring	30-Jun-14	528,296			
43.	ST Applicable on Inst # 8 (Completion of Internal Tile Flooring)	30-Jun-14	19,283			
44.	Credit Memo (TDS Certificate-XHRHFBI)			28-Jul-14	559764	14,533
45.	DPS Reversed TDSC # XHRHFBI			28-Jul-14	559763	
46.	HVAT Received			23-May-14	486118	67,267
47.	ST Applicable for Cheque # 486118	23-May-17	0			
48.	HVAT upto 31.03.2014	25-May-17	67,267			
49.	Credit Memo (Compensation credited on IOP)			03-Oct-17	773278	719,310
50.	Compensation credited on IOP-Reversal			03-Oct-17	773775	-719,310
51.	Intimation of Possession-including GST					
52.	Delayed payment charges Upto 06-Oct-20					
	Total		6,749,899			8,165,246

22. As per clause 11(a) of the agreement, the appellant was to hand over the possession of the unit within a period of 33 months from the date of start of construction plus grace period of 3 months for applying and obtaining the CC/OC which comes out to 22.05.2014. The occupation certificate was issued to the appellant on 24.12.2019. The offer of possession was issued by the appellant on 07.01.2020 to the respondent-allottee. However, the possession of the unit has yet not been delivered to the respondent-allottee. The perusal of offer of possession

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letter dated 07.01.2020 reveals that the respondent allottee was asked to make payment as per statement of accounts attached with the said offer of possession and was also asked to complete and submit the documents to the appellant before handing over the offer of possession of the unit. As per the said statement of account attached with the offer of possession letter dated 07.01.2020, the amount payable by the respondent-allottee for taking possession is Rs. 10,68,541/- (80,184+ 5,04,470+ 1,52,100 +2,23,320+ 40,000 +68,467) i.e. on account of Emaar MGF Land Ltd. A/c Palm Hills A/c, Emaar MGF Land Ltd. A/c Palm Hills A/c, P Hills Condominium Association, Pay via eStamping, Registration Charges, Lien marked FD for HVAT respectively. Thus, it is very clear that the appellant will hand over the possession of the unit only on the payment of the aforesaid amount of Rs. 10,68,541/- by the respondent allottee. As per statement of account dated 06.10.2020, the respondent-allottee had already paid an amount of Rs. 81,65,246/- against the total sale consideration of Rs. 87,49,898/-. At the time of offer of possession i.e. 07.01.2020, there is delay of 5 years 7 months and 16 days in handing over the possession from the due date of delivery of possession. It is apparent from the table of demands and payments reproduced above, that at the time of offer of possession, the respondent allottee was entitled for delay possession interest at the prescribed rate of interest as granted

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by the ld. authority which is much more than the amount which was payable by the respondent-allottee to the appellant. Thus, in our view the offer of possession dated 07.01.2020 was not at a valid offer of possession. In the written statement the appellant has mentioned that the appellants will hand over the possession to the respondent-allottee only on remittance of the amount as mentioned in the statement of accounts attached with the offer of possession. Thus, the appellant would not hand over the possession of the unit unless the respondent-allottee pays the amount as demanded by the appellant vide its offer of possession letter dated 07.01.2020, which is not correct. Therefore, we do not find anything wrong in the order of the ld. Authority in allowing the delay possession interest till actual handing over of the possession.

23. The further argument of the appellant is that the interest at the prescribed rate on the payments which has been made by the respondent-allottee after the due date of handing over the possession of the unit, shall be payable from the date on which the respective payments have been made. It is clarified that the interest at the prescribed rate on the payments made by the respondent-allottee after the due date of handing over the possession of the unit shall be from the date the respective payments have been made by the respondent-allottee to the appellant-promoter. However, the interest on the payments

made prior to the due date of handing over the possession shall be from the due date of handing over of the possession.

24. The further argument of the appellant is that the respondent-allottee has 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 by the respondent-allottee at the same rate as has been awarded to the respondent allottee as delayed possession charges.

25. 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.

26. No other issue was pressed before us.

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

28. The amount of Rs.54,27,920/- 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 as per the afore said observations, subject to tax liability, if any, as per law and rules.

29. No order as to costs.

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

31. File be consigned to the record.

Announced:  
February 02, 2023

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

Anil Kumar Gupta  
Member (Technical)