

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 314 of 2020
Date of Decision: 06.02.2023

Emaar MGF Land Limited, 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 (Haryana) 122002

Appellant-Promoter

Versus

Commander Narender Kumar, House No.352, Block-1, Defence
Colony, Chanakyapuri, New Delhi 110 021

Respondent-Allottee

CORAM:

Shri Inderjeet Mehta
Shri Anil Kumar Gupta

Member (Judicial)
Member (Technical)

Argued by: Ms. Rupali Shekhar Verma, Advocate,
Ld. counsel for the appellant-promoter.

Shri Kuldeep Kumar Kohli, Advocate,
Ld. counsel for the respondent-allottee.

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 21.01.2020 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Ld. Authority') whereby the Complaint No.1729 of 2018 filed by the respondent-allottee was disposed of with the following directions:

- i. The respondent 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 complainant from due date of possession i.e. 18.04.2013 till offer of possession. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of each subsequent month.*
- 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 due payments from the complainant shall be charged as the prescribed rate 10.20% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges."*

2. As per averments in the complaint, the appellant-promoter issued a provisional allotment letter on 18.12.2009

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for unit bearing No.EFP-29-0302, 3rd Floor, measuring 1650 sq. ft, in its project “Emerald Estate” Premier at Emerald Estate, Sector 65, Gurugram. The Buyer’s Agreement (for short, Agreement) was executed on 18.01.2010. As per statement of account dated 10.12.2018, the respondent-allottee had paid an amount of Rs.68,23,248/- against the total sale consideration of Rs.71,86,732/-. As per clause 11(a) of the agreement, the possession was to be handed over within a period of 36 months from the date of execution of agreement i.e. 18.01.2010 plus grace period of 3 months for applying and obtaining the CC/OC in respect of the unit which comes out to be 18.04.2013. However, the appellant-promoter delayed the possession of the unit, and, therefore, the respondent-allottee filed the complaint *inter alia* claiming the following relieves:-

“i. Direct the respondent to handover the possession of the unit in question to the complainant as per buyer’s agreement dated 18.01.2010.

ii. Direct the respondent to pay interest at rate of 25% per annum till possession of the flat on the amount paid by the complainant towards purchase of flat from the date of first payment.

iii. Restrain the respondent from raising fresh demand for payment under any head, as the complainant had already made considerable payment under construction linked plan though construction has not been made till date.”

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3. The complaint was contested by the appellant-promoter on the grounds of the jurisdiction of the Ld. Authority and on some other technical grounds.

4. The appellant-promoter has also pleaded that although the OC was received for the tower/apartment in question, it was noticed by the appellant-promoter that the competent authority appeared to have overlooked the fact that fire NOC had not been issued by the fire department. This discrepancy was brought to the notice of the competent authority (DTCP) by the appellant-promoter vide representation dated 08.02.2018 and the appellant-promoter had not acted upon the said OC and had consequently not offered possession of any apartment in the towers for which the fire NOC was pending including the apartment in question.

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

6. 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.

7. We have heard, Ld. counsel for the parties and have carefully examined the record.

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8. Initiating the arguments, it was contended by the Ld. counsel for the appellant-promoter that the agreement between the parties was executed on 18.01.2010. As per clause 11(a) the agreement, the period of delivery of possession is 36 months from date of execution of agreement 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 18.04.2013. The Occupation Certificate was applied on 30.06.2017 and was issued by the competent authority on 08.01.2018. The possession of the unit to the respondent was offered on 27.01.2020. The possession of the unit to the respondent allottee has been handed over on 05.05.2020. The Conveyance Deed was executed 10.06.2020. The only issue left to be decided in this appeal is that the Ld. 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. 18.04.2013, whereas 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 installments paid by the respondent-allottee. She contended that the latest statement of account indicating the demand raised by the appellant and payments made by the respondent allottee is placed at page 201 of the paper book. She further contended that the respondent-allottee shall be entitled for

delay possession interest at the prescribed rate of interest from the date 18.04.2013 only for the payment received up to that date. The interest, at the prescribed rate on the payments which has been made after the due date of possession, i.e. 18.04.2013, shall be payable from the date on which the respective payments have been made.

9. With these contentions, it was contended that the present appeal may be allowed and the impugned order dated 26.03.2021 may be modified, accordingly.

10. Per contra, Ld. counsel for the respondent-allottee contended that the issue being pressed by the appellant-promoter is logical and the Tribunal may pass an order as is being passed in various appeals on the similar issue.

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

12. The appellant-promoter issued a provisional allotment letter on 18.12.2009 for the unit bearing No.EFP-29-0302, 3rd Floor, measuring 1650 sq. ft, in its project "Emerald Estate" Premier at Emerald Estate, Sector 65, Gurugram. The agreement between the parties was executed on 18.01.2010. As per the statement of account dated 10.12.2018, the respondent-allottee had paid an amount of Rs.68,23,248/- against the total sale consideration of Rs.71,86,732/-. As per

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Clause 11(a) of the agreement, the possession was to be handed over within a period of 36 months from the date of execution of agreement i.e. 18.01.2010 plus grace period of 3 months for applying and obtaining the CC/OC in respect of the unit which comes out to be 18.04.2013. The occupation certificate was issued to the appellant-promoter on 18.01.2018 and the offer of possession was issued by the appellant-promoter to the respondent-allottee on 27.01.2020. The possession of the unit has been handed over to the respondent-allottee on 05.05.2020.

13. The relevant part of the latest Statement of Account dated 27.05.2020 showing the demands raised by the appellant-promoter and the amount paid by the respondent is reproduced as under:-

Sr. No.	Description	Demand		Collection	
		Date	Amount (Rs.)	Date	Amount (Rs.)
1.	Booking Amount	02-DEC-09	500,000		
2.	Booking Receipt (Cheque)			02-DEC-09	500,000
3	On Booking & Within 45 days of Booking	16-JAN-10	807,712		
4.	Receipt (Cheque)			21-Jan-10	807,712
5.	Within 90 Days of booking	02-MAR-10	653,856		
6.	Receipt (Cheque)			15-MAR-10	653,856
7.	Start of Construction	26-AUG-10	326,928		
8.	Receipt (Cheque)			18-NOV-10	326,929
9.	ST Applicable for Cheque # 888399	30-DEC-10	7,845		
10.	Receipt(Cheque)			23-MAR-11	7,845
11.	ST Applicable for Cheque # 888413	23-MAR-11	0		
12.	Receipt (Cheque)			03-OCT-11	56,772
13.	ST Applicable for Cheque # 790429	03-OCT-11	1,425		
14.	Receipt (Cheque)			05-OCT-11	53,000
15.	ST Applicable for Cheque # 170629	05-OCT-11	1,330		
16.	Completion of Ground Roof Slab	17-OCT-11	451,928		
17.	ST Applicable for Inst# 4 (Completion of Ground Floor Roof Slab)	17-OCT-11	5,089		

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18.	Receipt(Dd)			26-NOV-11	809,773
19.	ST Applicable for Cheque # 591194	26-NOV-11	7,845		
20.	Completion of First Floor Roof Slab	16-DEC-11	451,928		
21.	Receipt (Cheque)			13-JAN-12	502,159
22.	Completion of Second Floor Roof Slab	16-JAN-12	490,392		
23.	ST Applicable for Inst# 6 (Completion of Second Floor Roof Slab)	16-JAN-12	11,767		
24.	Receipt (Cheque)			11-FEB-12	502,160
25.	ST Applicable for Cheque # 238696	11-FEB-12	11,767		
26.	Completion of Third Floor Roof Slab	13-FEB-12	490,392		
27.	Completion of Final Floor Roof Slab	25-MAY-12	527,892		
28.	ST Applicable for Inst# 8 (Completion of Final Floor Roof Slab)	25-MAY-12	18,756		
29.	Receipt (Cheque)			25-MAY-12	546,649
30.	Receipt (Cheque)			10-SEP-13	6,438
31.	Collection Adjustment			10-SEP-13	-6,438
32.	Service Tax on Car Park	12-SEP-13	6,438		
33.	Receipt (Cheque)			18-SEP-13	6,438
34.	Receipt (RTGS)			26-MAY-14	540,210
35.	Completion of Plumbing and Wall Conduiting	29-MAY-14	527,892		
36.	ST Applicable for Inst# 9 (Completion of Plumbing and Wall Conduiting)	29-MAY-14	18,756		
37.	Receipt (Cheque)			09-MAY-16	6,440
38.	Receipt (Cheque)			02-MAY-17	35,739
39.	HVAT Received			02-MAY-17	49,361
40.	ST Applicable for Cheque # 289843	02-MAY-17	1,539		
41.	HVAT upto 31.03.2014	05-MAY-17	49,361		
42.	Credit Memo (GST Migration Transaction)			01-JUL-17	35,740
43.	GST Migration Transaction			01-JUL-17	-35,740
44.	ST Applicable for DM # 763086 (CM #)	01-JUL-17	-1,539		
45.	Completion of External Plaster-including GST	09-Oct-17	726,972		
46.	Receipt (Cheque)			09-OCT-17	646,683
47.	Receipt(RTGS)			09-OCT-17	44,550
48.	Receipt (Cheque)			27-OCT-17	200,000
49.	Receipt (Cheque)			27-OCT-17	482,422
50.	Completion of Internal Flooring and Wall Paint-Including GST	31-OCT-17	726,972		
51.	Receipt(RTGS)			31-OCT-17	44,550
52.	Credit Memo (Credit on Account of Anti Profiting)			18-DEC-18	21,439
53.	Credit Memo (Credit on Account of Anti Profiting)			12-APR-19	5,783
54.	Credit Memo (Credit on Account of Anti Profiting)			19-AUG-19	54,639
55.	Credit Memo (EPR Credited)			27-JAN-20	3,430
56.	DPS Received CM # 888242			27-JAN-20	3,430
57.	Collection adjustment			27JAN-20	-3,430
58.	Intimation of possession-including GST	28-FEB-20	554,052		
59.	Receipt (Cheque)			02-MAR-20	512,581
60.	Delayed payment charges up to 27-MAY-20				
	Total		7,377,295		7,421,120

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14. It is observed from the above table of statement of accounts dated 27.05.2020 that certain payments have been demanded by the appellant after the due date of delivery of possession i.e. 18.04.2013 and thereafter payments have been made by the respondent-allottee. The only argument of the appellant-promoter 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 on 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 i.e. 18.04.2013.

15. No other issue was pressed before us.

16. Thus, keeping in view of our above discussion, the present appeal is partly allowed as per the aforesaid observations and impugned order 20.01.2020 is modified accordingly.

17. The amount of Rs.51,34,933/- deposited by the appellant-promoter with this Tribunal as pre-deposit to comply

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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.

18. No order as to costs.

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

20. File be consigned to the record.

Announced:
February 06, 2023

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

Anil Kumar Gupta
Member (Technical)

Manoj Rana