

**BEFORE THE HARYANA REAL ESTATE  
APPELLATE TRIBUNAL**

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Appeal No.103 of 2020

Date of Decision: 04.01.2023

M/s Emaar MGF Land Limited, registered office at # 306-308 Square One, C-2 District Centre, Saket, New Delhi-110017. 2<sup>nd</sup> Address Corporate Office, Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram (Haryana) 122002

...Appellant

Versus

1. Rajat Lal son of Sh. Harbans Lal resident of House No.P1/5, First Floor, DLF Phase-II, Gurugram.
2. Dr. T. Chandan son of Sh. K.R. Thimme Gowda resident of House No.D-114, Ground Floor, Freedom Fighters Enclave, IGNOU Road, New Delhi.

..Respondents.

**CORAM:**

**Shri Inderjeet Mehta**

**Member (Judicial)**

**Shri Anil Kumar Gupta**

**Member (Technical)**

**Argued by:**

Ms. Rupali Shekhar Verma, Advocate,  
Ld. counsel for the appellant.

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

**ORDER:**

**ANIL KUMAR GUPTA, MEMBER (TECHNICAL):**

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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 16.01.2019 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Ld. Authority') whereby the Complaint No. 601 of 2018 filed by the respondents-allottees was disposed of with the following directions:

*"i. The respondent is directed to pay interest at the prescribed rate i.e. 10.75% for every month of delay from the due date of possession i.e. 17.11.2013 till handing over the possession i.e. 24.01.2018.*

*ii. The respondent is directed to desist from charging holding charges for the period the matter remained sub-judice."*

2. As per the averment in the complaint Unit No.EP0-03-019 measuring 627.16 Sq.ft. was allotted to the respondents-allottees in the project of the appellant "Emerald Plaza in Emerald Hills" Sector 65, Gurugram, Haryana. The office space Buyer's Agreement' (further called as, 'the Agreement') was executed between the parties on 17.01.2011. As per agreement the due date of offer of possession is after 30 months from the date of agreement plus 120 days of grace period which comes out

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to be 17.11.2013. The total sale consideration as per statement of account dated 17.08.2018 is Rs.34,28,412/-. The total amount paid by the respondents-allottees is Rs.34,31,798/-.

3. It was pleaded by the respondents-allottees that after delay of five years, letter of offer of possession was received in January, 2018. The offer of possession letter does not mention the interest for the delayed period by the respondents-allottees. The respondents-allottees requested the appellant-promoter to pay interest for the delayed possession but the same was not given by the appellant-promoter and, therefore, respondents-allottees filed a complaint before the Ld. Authority for the delayed possession interest at the prescribed rate for every month of delay till handing over of the possession.

4. Per contra, the appellant in its reply to the complaint pleaded that the complaints pertaining to the 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 this Hon'ble Authority. It was further pleaded that the occupation certificate was received on 08.01.2018 and the possession of the unit was offered on 24.01.2018.

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5. After controverting all the pleas raised by the respondents-allottees and on some other technical grounds the dismissal of the complaint was sought by the appellant-promoter.

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, Ms. Rupali Shekhar Verma, Advocate, Ld. counsel for the appellant-promoter and Sh. Sanjeev Sharma, Advocate, Ld. counsel for the respondents-allottees and have carefully examined the record.

8. At the very outset, the Ld. counsel for the appellant contended that they have taken the plea in the grounds of appeal that the ld. Authority does not have the jurisdiction and some other technical grounds in the grounds of the appeal. However, the same are not being pressed 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.**

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9. She contended that in this appeal the only issue is that the delay possession interest on the payments made by respondents–allottees after the due date of delivery of possession i.e. 17.11.2013 should be from the date such payments have been made.

10. With these contentions, it was contended that the present appeal may be allowed and the impugned order dated 16.01.2019 be set aside.

11. Per contra, Ld. counsel for the respondents–allottees 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.

12. It was further contended that the impugned order dated 16.01.2019 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.

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

14. The admitted facts of the case are that the agreement between the parties for unit No.EP0-03-019 measuring 627.16 Sq.ft. in the project of the appellant

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“Emerald Plaza in Emerald Hills” Sector 65, Gurugram, Haryana was executed on 17.01.2011. The total sale consideration as per the statement of account is Rs.34,28,412/- and total amount paid by the respondents-allottees by that date is Rs.34,31,798/-. As per agreement the due date of offer of possession is after 30 months from the date of agreement plus 120 days of grace period which comes out to be 17.11.2013. The occupation certificate was received by the appellant-promoter on 08.01.2018. The offer of possession was issued on 27.01.2018

15. The only contention raised in this appeal by the appellant is that the respondents-allottees are entitled for the interest at the prescribed rate, on the payments made by them after the due date of possession i.e. 17.11.2013, from the date such payments have been made by the respondents-allottees. It is clarified that the interest on payments made by the respondents-allottees prior to the due date of possession i.e. 17.11.2013 shall be from 17.11.2013 and the interest on the payments made after 17.11.2013 i.e. due date of delivery of possession shall be from the date the respective payments have been made by the respondents-allottees to the appellant-promoter.

16. No other issue was pressed before us.

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

18. The amount of Rs. 15,45,414/- 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 respondents-allottees, excess amount may be remitted to the appellant, subject to tax liability, if any, as per law and rules.

19. No order as to costs.

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

21. File be consigned to the record.

Announced:

January 04, 2023

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

Anil Kumar Gupta  
Member (Technical)