

**BEFORE THE HARYANA REAL ESTATE  
APPELLATE TRIBUNAL**

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Appeal No.101 of 2020

Date of Decision: 06.01.2023

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, Business Park, MG Road, Sikanderpur, Sector 28, Gurugram (Haryana) 122002

...Appellant

Versus

Mr. Ashok Nagpal, authorized signatory of M/s O.C Construction Private Limited, # 8101, DLF Phase-4, Gurugram, Haryana.

..Respondent.

**CORAM:**

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

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

**Argued by:** Ms. Rupali Shekhar Verma, 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 16.01.2019 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Ld. Authority') whereby the Complaint No. 456 of 2018 filed by the respondent-allottee was disposed of with the following directions:

*"i. the respondent is directed to pay delay possession charges at the prescribed rate of 10.75 % per annum for every month of delay from the due date of delivery of possession i.e. 24.09.2013 till offer of possession (30.01.2018) within 90 days from this order."*

*ii. The authority has decided to take suo-moto cognizance against the respondent - promoter for not getting the project registered and for that registration branch is directed to initiate necessary action against the respondent under section 59 of the Act. A copy of this order be endorsed to the registration branch."*

2. As per the averment in the complaint Unit No.EP0-07-017, 7<sup>th</sup> floor measuring 655.19 Sq.ft. was allotted to the respondent-allottee in the project of the appellant "Emerald Plaza" Sector 65, Golf Course Link Road, Gurugram, Haryana. The office space Buyer's

## Appeal No. 101 of 2020

Agreement' (further called as, 'the Agreement') was executed between the parties on 24.12.2010. 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 24.09.2013. The Basic sale price of the unit is Rs.42,58,735/-. The total amount paid by the respondent-allottee till June 2013 is Rs.39,75,029/-.

3. It was pleaded by the respondent-allottee that after delay of five years, letter of offer of possession was received in January, 2018 along with a demand of Rs.21,07,753/-. He was aghast to see such a huge demand. The offer of possession letter also did not mention the interest for the delay in delivery of possession. The respondent-allottee requested and sent a legal notice to the appellant - promoter to pay interest for the delayed possession but the same was not given by the appellant-promoter and, therefore, respondent-allottee filed a complaint/amended-complaint before the Ld. Authority for the delayed possession interest at the prescribed rate for every month of delay till the handing over of possession.

4. Per contra, ld. counsel for 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.

5. It was further pleaded that the OCCPL is a private limited company and works in the business of real estate and also deals in the sale and purchase of real estate and has booked the unit in question for a commercial purpose which also goes to clearly show that OCCPL is an investor and not a consumer. Further pleaded that the occupation certificate was applied on 22.05.2017 and granted on 08.01.2018 and the possession of the unit was offered on 30.01.2018 along with statement of accounts dated 30.01.2018. However, even after receiving the notice of possession and various reminders OCCPL did not make the payments and have not come forward to take the possession of the unit.

6. After controverting all the pleas raised by the respondent-allottee and on some other technical grounds the dismissal of the complaint was sought by the appellant-promoter.

7. 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.

## Appeal No. 101 of 2020

8. We have heard, Ms. Rupali Shekhar Verma, Advocate, Ld. counsel for the appellant-promoter and Sh. Sanjeev Sharma, Advocate, Ld. counsel for the respondent-allottee and have carefully examined the record.

9. 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.**

10. She contended that in this appeal the only issue is that the delay possession interest on the payments made by respondent-allottee after the due date of delivery of possession i.e. 24.09.2013 should be from the date such payments have been made.

11. With this contention, it was contended that the present appeal may be allowed and the impugned order dated 16.01.2019 be set aside.

## Appeal No. 101 of 2020

12. 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.

13. 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.

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

15. The admitted facts of the case are Unit No.EP0-07-017, 7<sup>th</sup> floor measuring 655.19 Sq.ft. was allotted to the respondent-allottee in the project of the appellant "Emerald Plaza" Sector 65, Golf Course Link Road, Gurugram, Haryana. The Agreement. was executed between the parties on 24.12.2010. As per clause no 16(a)(i) of the 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 24.09.2013. The Basic sale price of the unit is Rs.42,58,735/-. The total amount paid by the respondent-allottee till June 2013 is Rs.39,75,029/-. The occupation certificate was

## Appeal No. 101 of 2020

applied on 22.05.2017 and was issued on 08.01.2018 and the possession of the unit was offered on 30.01.2018.

16. The only contention raised in this appeal by the appellant is that the respondent-allottee is entitled for the interest at the prescribed rate, on the payments made by them after the due date of possession i.e. 24.09.2013, from the date such payments has been made by the respondent-allottee. It is clarified that the interest on payments made by the respondent-allottee prior to the due date of possession i.e. 24.09.2013 shall be from 24.09.2013 and the interest on the payments made after 24.09.2013 i.e. due date of delivery of possession shall be from the date the respective payments have been made by the respondent-allottee to the appellant-promoter.

17. No other issue was pressed before us.

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

19. The amount of Rs. 18,60,286/- 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,

## Appeal No. 101 of 2020

excess amount may be remitted to the appellant, subject to tax liability, if any, as per law and rules.

20. No order as to costs.

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

22. File be consigned to the record.

Announced:  
January 06, 2023

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

Anil Kumar Gupta  
Member (Technical)

Judgment, Haryana Real Estate Appellate Tribunal