

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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Appeal No. 619 of 2021

Date of Decision: 10.01.2023

Parminder Singh Sohal S/o Shri Sarabjit Singh, R/o RZF-372  
UGF, Flat No. UG2, KH#51/12/2, Vishnu Apartment, Raj  
Nagar Part 2, Guru Nanak Road, Palm Colony, Delhi 110077.

Appellant

Versus

BPTP Ltd. M-11, Middle Circle, Connaught Place, New Delhi-  
110001.

Respondent

**CORAM:**

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

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

**Argued by:** Shri Nitin Kant Setia, Advocate,  
Ld. counsel for the appellant.

Shri Hemant Saini , 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 01.09.2021 passed by the Haryana Real

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Estate Regulatory Authority, Panchkula (for short, 'the Ld. Authority') whereby the Complaint No. 576 of 2020 filed by the appellant was disposed of, the relevant part of the order is reproduced as below:

*"4 (iv) ..... As per complainant's submissions, deemed date of possession is 12.03.2016 which 36 months plus 6 months from the date of sanctioning of the building plans or execution of flat buyer's agreement, whichever is later. No averment whatsoever, has been made by the respondent as to when the building plans got approved. Considered view of this Authority is that the complainant is entitled to interest for the entire period of delay from the deemed date of offer of possession which was 12.03.2016 till the actual offer of possession of the unit as and when being offered after obtaining occupation certificate from concerned department of the State Government.*

*In furtherance of aforementioned observations, it is prudent to observe that the complainant who has been waiting for more than 5 years to have possession of booked unit should not suffer any more on account of lapse and default on part of respondent. Hence, he is very much entitled to be paid upfront interest for the delay caused in completion of the project by the respondent promoter from the deemed date of possession till handing over of the possession that too after receipt of occupation certificate further in terms of principles laid down by the Authority in Complaint No. 113/2018 Madhu*

*Sareen Vs BPTP Pvt. Ltd.. Accordingly, it is decided that upfront payment of delay interest amounting to Rs. 12,64,326/- in terms of Rule 15 of HREERA Rules, 2017 i.e., SBI MCLR+2% for the period ranging from 12.03.2016 (deemed date of possession) to 01.09.2021 is awarded to the complainant. Further, monthly interest of Rs. 21,856/- shall also be payable up to the date of actual handing over of the possession after obtaining occupation certificate .....*”

5. *The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs. 28,20,188/-. Said total amount has been worked out after deducting charges paid by complainant on account of development charges amounting to Rs. 3,84,352.2/- from total paid amount of Rs. 32,04,540/-. The amount of development charges is not payable to the builder rather required to be passed on by builder to the concerned department/ authorities. If a builder does not pass on this amount to the concerned department, the interest thereon becomes payable only to the department concerned and the builder for such default of non-passing of amount to the concerned department will himself be liable to bear the burden of interest. In other words, it can be said that the development charges collected by a builder cannot be considered a factor for determining the interest payable to the allottee towards delay in delivery of possession.”*

2. As per the averments in the complaint by the appellant-allottee, the Flat Buyer's Agreement was executed

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between the appellant-allottee and the respondent-promoter for a flat bearing no. B-901 admeasuring 1120 sq. ft. in the respondent's project "Discovery Park" on 13.09.2012. As per the agreement, the possession is to be offered on or before 36 months plus 6 months from the date of sanctioning of the building plans or execution of Builder Buyer's Agreement, whichever is later, and as such works out to be 12.03.2016 as respondent has not disclosed the date of sanction of building plan. It was further pleaded that appellant-allottee had already paid an amount of Rs. 32,04,540/- against basic sale price of Rs. 28,56,453.6/-. It was further pleaded that the possession has already been delayed for more than five years. It was further pleaded that as per agreement, the delay penalty is Rs. 5 per sq. ft payable to the appellant-allottee in the event of delay in offering possession by the respondent-promoter but as per clause 2.11 of the agreement, the respondent-promoter is entitled to charge interest @ 18% p.a. in case appellant-allottee delays in making payments. Therefore, it was alleged that Builder buyer's agreement executed between the parties is completely one sided and against the principle of equity and natural justice.

3. With the aforesaid pleadings, the appellant sought following reliefs in his complaint before the ld. Authority.

“a) The respondent be directed to execute the conveyance deed in favour of the complainant and hand over to him the possession of the Flat No. B-901, Discovery Park, Sector-80, Faridabad, Haryana after payment of interest/compensation @ 18% per annum in accordance with Real Estate (Regulation and Development) Act, 2016 and the Haryana State Real Estate (Regulation and Development) Rules, 2017 on the amount paid till date by the complainant to the respondent from the last date fixed for handing over of possession as per the agreement till the date of delivery of possession.

b) Direct the respondent to treat the complainant at par with the allottees who were part of discovery park buyers welfare association in whose favour the judgment dated 06.03.2019 has been passed in complaint no. 633 of 2018 and 1228 of 2018 titled Discovery Park Buyers Welfare Association Vs. BPTP Ltd. and restrain the respondent from raising any demands towards Cost Escalation without associating the complainant before calculation of Cost Escalation; from raising any demand for the Area over and above the area booked by the complainant and sanctioned by the appropriate authority; from raising any demand towards EEDC till the decision of the Hon'ble High Court in the matter pertaining to the payment of EEDC; from raising any demand towards GST; from raising any demand towards any kind of tax after March 2016; from raising any demand towards Club Membership Charges; and / or any other unjustified demand in contravention of the Act and pay delay

*penalty in accordance with the Real Estate (Regulation and Development) Act 2016.”*

4. The complaint was resisted by the respondent-promoter on the grounds that the appellant-allottee cannot seek relief qua the agreement that was executed prior to coming into force of the Act. Both the parties are bound by the terms of builder buyer's agreement. It was further pleaded that the present complaint involves disputed question of fact and law requiring detailed examination and cross examination of several independent and expert witnesses and therefore it cannot be decided in a summary manner by the Id. Authority.

5. In its reply to the complaint, it was admitted by the respondent-promoter that an amount of Rs. 32,04,540/- has been received from the appellant-allottee and builder buyer's agreement was executed between the parties on 13.09.2012 and the appellant-allottee availed an inaugural discount of Rs. 1,28,346/- . It was further pleaded that the possession was to be delivered within 36 months from the date of execution of agreement or sanction of building plans, whichever is later after adding grace period of 6 months. It was further pleaded that the said delivery of possession was subject to entire instalments being paid on time and no force majeure circumstances having being occurred.

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6. After controverting all the pleas of the appellant-allottee, the respondent-promoter sought dismissal of the complaint being without any merit.

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.

8. We have heard Shri Nitin Kant Setia, Advocate ld. counsel for the appellant and Shri Hemant Saini, Advocate, ld. counsel for the respondent and have carefully examined the record.

9. Ld. counsel for the appellant contended that in this appeal he is only pressing one issue, that the ld. Authority while passing the impugned order erred in holding that the delay possession interest is to be calculated after deducting the development charges amounting to Rs. 3,84,352.2/- from the total amount of Rs. 32,04,540/- paid by the appellant-allottee as development charges cannot be severed from the total amount paid by the appellant- allottee to the respondent-Promoter.

10. He contended that the delay interest has to be awarded on the whole amount paid by the appellant-allottee

towards the purchase of the unit as held by the Hon'ble Apex Court in case bearing **Civil Appeal No. 6239 of 2019 titled as Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. and Ors. vide judgment dated 24.08.2020.**

11. It was further contended that this has been a consistent norm across the country of all adjudicating authorities/courts that the total amount paid by the allottees becomes the base amount for calculating delay possession interest. This is for the first time without it being not even the case of the respondent-promoter that the Id. Authority has severed development charges from total amount paid for the purpose of calculating delay possession interest. Also, the appellant-allottee was not confronted with any query by the Id. Authority on this issue. It was further contended that the rationale behind the orders of the Id. Authority that the development charges are not paid to the builder rather passed on by the builder to the concerned department and therefore the amount collected towards development charges cannot be considered a factor for determining the delay interest is bad and irrational as the amount paid towards the development charges is ultimately a component of the total amount of the unit paid by the appellant-allottee on the assurance that the timely payment of all the amounts will ensure timely delivery of



possession of the unit. Therefore, it is irrational to deduct development charges from total amount paid by the appellant-allottee while awarding interest on delayed possession for no fault of the appellant-allottee.

12. It was further contended that if the above rationale of the Id. Authority is extended further than on the similar grounds the amounts paid by the appellant to the construction workers, contractors, suppliers of raw materials and taxes paid to the government like Service Tax, VAT, GST, etc. can also be severed from the total amount using the same rationale as those amounts are also in a way passed on by the builder to other agencies and it is only the profit margin that the builder has made be considered for calculating delay possession interest which is not correct and against the settled law of the land.

13. It was further contended that the appellant on account of the delay in handing over the possession of the unit has been denied the enjoyment of return on his whole investment and, therefore the investment has to be taken as a whole without severing for granting delay possession interest on the amount of investment made by the appellant.

14. It was further contended that the Hon'ble High Court of **Punjab and Haryana in RERA Appeal No. 95 of 2021**

**(O&M) titled as Emaar India Limited (Formerly Known as Emaar MGF Land Limited) Vs. Kaushal Pal Singh alias Kushpal Singh** has clearly held that the proviso to Section 18(1) of the Act clearly enables the authority to compensate the allottee for the losses suffered on account of delay in delivery of possession by the promoter. In the said judgement, it is clearly mentioned that the interest shall be payable on the complete amount paid by the appellant-allottee to the respondent-promoter.

15. He further contended that the reasoning given in the impugned order of the authority suffers from clear perversity and irrationality in ordering to deduct the amount of External Development Charges (EDC) from the total amount paid by the appellant-allottee to the respondent- promoter for granting the delay possession interest and therefore the impugned order be set aside to that extent and appeal may be allowed and the appellant be awarded delay possession interest on the whole amount paid by him towards the unit purchased.

16. On the other hand, ld. counsel for the respondent contended that in Section 18 of the Act, it is mentioned that the promoter is to return the amount received by him to the allottee, in case the allottee wishes to withdraw from the project. However, in the stipulation of the proviso of section

18(1) for grant of interest for every month of delay where the allottee does intend to withdraw from the project, the word 'amount' is not mentioned. He contended that it has been left to the wisdom of the adjudicating authority to decide the quantum of amount on which the delayed possession interest is to be given. Thus, the order of the Id. Authority is perfect in severing the amount of EDC from the total amount paid by the allottee for delay possession interest as the amount of EDC has been deposited by the builder to the Government and has not been utilized by him.

17. With these pleadings, he contended that the order of the Authority with respect to deduction of the EDC from the total amount for payment of delay possession interest is correct and therefore appeal may be dismissed being without any merit.

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

19. The brief facts of the case are that the Flat Buyer's Agreement was executed between the appellant-allottee and the respondent-promoter for a flat bearing no. B-901 admeasuring 1120 sq. ft. in the respondent's project "Discovery Park" on 13.09.2012. As per the agreement, the possession is to be offered on or before 36 months plus 6 months from the date of

sanctioning of the building plans or execution of Builder Buyer's Agreement, whichever is later. The deemed date of possession in the impugned order has been held to be 12.03.2016 and there is no challenge to it in this appeal. The appellant-allottee had already paid an amount of Rs. 32,04,540/- against basic sale price of Rs. 28,56,453.6/-. The possession of the unit is delayed and the Ld. Authority has awarded delayed possession interest for the delay in delivery of possession on the total amount paid by the appellant-allottee minus the amount of External Development Charges (EDC).

20. The only controversy in this appeal is that whether the delay possession interest payable to the appellant-allottee for the delay in delivery of possession is on the total amount paid by him to the respondent-promoter or the amount of EDC paid by the respondent-promoter to the Government is required to be deducted from the total amount paid by the appellant-allottee for the purpose of calculation of delay possession interest.

21. The purchase of a house is a life time event of an allottee and involves huge investment. In normal circumstances, the allottee does not have enough resources to pay the cost of the house in one go and takes the loan from the banks or the lending institutions. The loan is paid back in

installments over a longer period of time ranging from a period of 15 years or so. For this consideration of paying back the loan amount in installments over a longer period of time, the bank charges interest on the amount of loan paid by the bank to the allottee for purchase of the house. The bank does not distinguish in charging the interest of the amount borrowed by the allottee whether the allottee has paid the amount towards the basic cost of the unit or for the EDC charges or any other charges raised by the Promoter. The allottee has to pay the interest on the whole of the amount which he has borrowed from the bank for the purchase of the house and paid it to the promoter. In addition to the above, on account of the delay in handing over the possession for no fault of the allottee, the allottee has been deprived of the enjoyment of whole of its investment, whether the promoter has utilized it for construction purposes or has paid the EDC. Interest is the compensation of the whole of the amount which the allottee has invested and for which timely delivery has not made by the promoter. Therefore, the interest is payable on the total investment made by the appellant-allottee for the purchase of the unit as he has not been able to enjoy the return on his total investment.

22. There is nothing stipulated in the proviso to section 18(1) of the Act that the interest is not payable to the allottee

on the whole amount or the EDC charges are to be deducted from the amount the allottee has paid to the Promoter. The plain reading of the section 18(1) along with the proviso indicates that the interest is to be paid on the whole amount. Thus, there is no force in the contention of the respondent that the legislation has kept it open for the 'Authority' to decide as to on what amount the interest is admissible to the allottee of the payment paid by him to the promoter. The Hon'ble Punjab and Haryana High Court in Rera Appeal No. 95 of 2021 in case Emaar India Ltd. (Supra), while deciding the issue whether the interest is payable on the whole amount paid by the allottee to the promoter or the amount of *H-VAT, GST, EDC* is to be deducted from the payments made by the allottee, has clearly laid down that the proviso to Section 18(1) of the 2016 Act clearly enables the authority to compensate the allottee for the losses suffered on account of delay in delivery of possession by the promoter. The interest shall be payable on the complete amount paid by the allottee to the promoter. The relevant part of the above said judgment is reproduced as below:-

*“10. On a careful reading of the proviso to Section 18(1) of the 2016 Act, it is evident that an allottee who does not intend to withdraw from the project, is entitled to be paid by the promoter the interest for every month of delay till the delivery of possession at such rate as may be prescribed. It is in*

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*the nature of damages or compensation for delay in delivery of the possession of the apartment/unit. Such interest for every month of delay is payable on the entire amount paid by the allottee. The interest has been defined in Section 2(za) of the 2016 Act. Explanation(i) of Section 2(Aa) of the 2016 Act provides that in case of default, the interest is payable by the promoter to the allottee at the rate equal to the rate of interest as shall be prescribed in this behalf. Explanation (ii) Section 2(Za) of the 2016 Act provides that the interest shall be payable to the allottee from the date the promoter received the amount or any part thereof. The proviso to Section 18(1) of the 2016 Act clearly enables to authority to compensate the allottee for the losses suffered on account of delay in delivery of possession by the promoter. The interest shall be payable on the complete amount paid by the allottee to the promoter. The learned counsel representing the appellant has failed to draw the attention of the Court towards any statutory provision prohibiting the payment of interest on the amount H-VAT, GST, EDC etc. under proviso to Clause (I) of Section 18 of the 2016 Act to the allottee. Section 2(g) of the 1975 Act defines the external development works. Section 3(3)(a)(ii) of the 1975 Act provides that the owner who wants to develop his land into a colony is liable to pay the proportionate development charges. In other, words, the liability to pay the amount is on the licensee (owner-promoter).*

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11. *Moreover, the Tribunal has correctly observed that this plea was never taken by the appellant either in reply to the complaint or in the grounds of appeal before the Tribunal. Furthermore, no material has been placed to show as to when and how the demand of external development charges was raised by the government and how much development charges were actually deposited by the promoter. It has been contended by the learned counsel representing the respondent that GST was enforced w.e.f. 01.07.2017 whereas the date of delivery of possession was 17.11.2017. He submits that GST amount may have been paid by the promoter on account of the delay. In the considered view of this Court, on parity of reasons as has been noticed while deciding the issue of deposit of the external development charges, the interest shall be payable on the entire amount paid by the allottee.”*

23. Thus, in view of our discussion in above paras, and the ratio of the above said law, we are of the considered opinion that the delay possession interest is to be paid to the appellant-allottee by the respondent-promoter on the total amount paid by him to the respondent-promoter. Thus, the amount of Rs. 3,84,352.2 on account of development charges, ordered to be deducted in the impugned order by the Ld. authority, from the total amount of Rs. 32,04,540/- paid by the appellant-allottee for calculating the delay possession interest is not correct and is against the law.



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24. Consequently, the appeal filed by the appellant is allowed and the impugned order of the Ld. authority to the aforesaid account is set aside to that extent only.

25. No other point was argued before us.

26. No order to cost.

27. Copy of this order be sent to the parties/Ld. counsel for the parties and Ld. Haryana Real Estate Regulatory Authority, Panchkula.

28. File be consigned to the record.

Announced:  
January 10, 2023

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

Anil Kumar Gupta  
Member (Technical)

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