

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

Appeal No.312 of 2020

Date of Decision: 22.12.2022

Emaar India Ltd. 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, Sikandarpur, Sector 28, Gurugram (Haryana) 122 002

...Appellant

Versus

Mr. Pawan Kumar Gupta, resident of House No. 528/3, Roshanpur, opposite Ganteshwar Mandir, Gurugram, Haryana.

..Respondent.

**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 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. 454 of 2018 filed by the respondent-allottee was disposed of with the following directions:

*“i. The respondent is directed to pay interest at the prescribed rate i.e. 10.25% for every month of delay on the amount from the due date of possession i.e. 01.05.2013 till the offer of possession i.e. 27.01.2018. The interest so accrued shall be paid within 90 days from the date of this order.*

*ii. The complainant is also advised to take possession and after possession, if they come to know any deficiencies they may approached the appropriate forum.*

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

2. As per the averment in the complaint shop No.EPS-CF-018 measuring 1043.5 Sq.ft. was allotted to the respondent-allottee in the project of the appellant 'Emerald hills' Sector 65, Urban Estate, Gurugram, Haryana. The 'retail space Buyer's Agreement' (further called as, 'the Agreement') was executed between the

parties on 01.07.2010. 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 01.05.2013. The total sale consideration as per statement of account dated 17.09.2020 is Rs.74,35,013/-. The total amount paid by the respondent-allottee is Rs.74,47,874/-. The respondent allottee has pleaded in the complaint that the appellant had only raised the construction upto 5<sup>th</sup> floor at the time of handing over the due date of possession i.e. in June 2013 and is demanding illegal amounts and sought the refund of the entire amount paid by him along with interest at the prescribed rate which is an obligation of the promoter as per section 18(1) of the act.

3. 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. It was pleaded that the occupation certificate was received on 08.01.2018 and the possession of the unit was offered on 27.01.2018. After controverting all the pleas raised by the respondent-allottee, the appellant-promoter sought for dismissal of the complaint.

4. 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.

5. 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.

6. 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.**

7. 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. 01.05.2013 should be from the date such payments have been made.

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

9. 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.

10. 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.

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

12. The admitted facts of the case are that the agreement between the parties for unit No. EPS-CF-018 measuring 1043.5 sq. ft. in the project of the appellant 'Emerald hills', Sector 65, Urban Estate, Gurugram, Haryana was executed on 01.07.2010. The total sale consideration as per the statement of account is Rs.74,35,013/- and total amount paid by the respondent-allottee by that date is Rs.74,47,874/-. 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 01.05.2013. The occupation certificate was received by the appellant-promoter on 08.01.2018. The offer of possession was issued on 27.01.2018

13. 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 him after the due date of possession i.e. 01.05.2013 as per agreement, 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. 01.05.2013 shall be from 01.05.2013 and the interest on the payments made after 01.05.2013 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.

14. No other issue was pressed before us.

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

16. The amount of Rs. 37,99,232/- 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, excess amount may be remitted to the appellant, subject to tax liability, if any, as per law and rules.

17. No order as to costs.

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

19. File be consigned to the record.

Announced:

December 22, 2022

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

Anil Kumar Gupta  
Member (Technical)