

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.110 of 2021

Date of Decision: 19.01.2023

Emaar India Limited (Formerly known as Emaar MGF Land Limited), 306-308, 3rd Floor, Square One, C-2, District Centre, Saket, New Delhi-110017, also at Emaar Business Park, MG Road, Sikanderpur Chowk, Sector-28, Gurugram-122002, Haryana through its authorised representative Mr. Subrat Kumar Pradhan son of late Shri Sarat Kumar Pardhan.

Appellant

Versus

1. Shri Sanjay Raina son of Shri R.L. Raina
2. Mrs. Anita Raina w/o Shri Sanjay Raina

Both Residents of 503, Tower-3, The Palms, South City-I,
near Patio Club, Gurugram—122001.

Respondents

CORAM:

Shri Inderjeet Mehta,
Shri Anil Kumar Gupta,

Member (Judicial)
Member (Technical)

Argued by: Shri Kunal Dawar, Advocate, Id. Counsel for
the appellant.

Shri Amrinder Singh, Advocate, Id. Counsel for
the respondents.

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ORDER:

INDERJEET MEHTA, MEMBER (JUDICIAL):

The present appeal has been preferred against the order dated 12.02.2021, handed down by the learned Haryana Real Estate Regulatory Authority, Gurugram, (hereinafter called 'the Authority'), whereby Complaint No.CR/5006/2019 "Emaar MGF Land Limited vs. Sanjay Raina and Another" filed by appellant/promoter was disposed of as follows:-

"Reply has already been filed by the respondent.

Since the matter is pending before the NCLT, the complainant is advised to pursue the matter before the said forum.

In view of the pendency of the matter before the NCLT, the present complaint stands disposed. File be consigned to the Registry."

2. The appellant/promoter filed complaint before the learned Authority averring that the respondents/allottees were allotted a villa bearing no.MAR-BE-053 admeasuring 267 square yards along with construction consisting of basement, graound+2 floors having super built-up area measuring 5605 sq. ft. in the project of the appellant known as "Marbella" situated at Sector 65/66, Gurugram, vide allotment letter dated 18.02.2014. The basic price of the above said villa had

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been quantified at Rs.5,88,00,000/-. A Buyer's Agreement (hereinafter referred to as 'the agreement') dated 05.03.2014 was executed between the parties. The time period for delivery of possession was 30 months along with grace period of three months from the date of commencement of the development work. Both the parties were bound by the terms and conditions of the agreement.

3. It was further pleaded that the respondents/allottees were offered possession of the said villa vide letter dated 06.06.2019 on paying the outstanding amount of Rs.3,20,47,909/-. However, The respondents/allottees did not come forward to take possession. Hence, the appellant/promoter filed the complaint seeking following relief:-

"1. Direct the respondents to come forward to obtain possession of village bearing number MAR-BE-053 along with construction consisting of basement, ground+2 floors having super built-up area measuring 5605 square feet located in "Marbella" project situated at Sector65/66, Gurugram, Haryana.

2. Direct the respondents to pay the sum of Rs.3,30,59,964/- (Rupees Three Crores Thirty Lakhs Fifty Nine Thousand Nine Hundred and Sixty Four Only) to the Complainant towards

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outstanding sale consideration amount, holding charges and maintenance charges along with accumulated interest, stamp duty, registration charges and Delayed payment charges as indicated in the statement of accounts as on date. The delayed payment charges, late penalty fees on Maintenance charges and Holding Charges are recurring in nature.

3. *Direct the respondent to future interest at the rate of 24% per annum in terms of Buyer's Agreement dated 05.03.2014 till payment of the aforesaid outstanding amount.*
4. *Direct the respondent to pay an amount of Rs.1,00,000/- as litigation expenses."*

4. The respondents/allottees filed reply denying the allegations made in the complaint. It was pleaded that the appellant/promoter had offered possession of a unit which was totally substandard and villa was in an inhabitable state and merely a bare bone structure, which was in total contrast to the luxurious villa advertised to the respondents. It was further pleaded that the project lacked proper infrastructure, proper access to the villa, etc. It was further pleaded that the appellant/promoter had filed the complaint in a very haphazard manner and with the intention to file a false case against the respondents/allottees as the respondents had approached the Hon'ble National Company Law Tribunal, New

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Delhi (for brevity 'NCLT'), for initiation of CIR Process against the appellants on account of default on its part in granting possession on time. It was further submitted that the respondents had terminated the agreement on 02.09.2019, much prior to filing of the present complaint by the appellant/promoter. It was prayed that the complaint be dismissed.

5. After filing reply by the respondents/allottees, the learned Authority disposed of the complaint by passing the impugned order dated 12.02.2021, reproduced in the opening para of this order.

6. Hence, this appeal.

7. Today, during the course of arguments, learned counsel for the appellants has placed on file the order dated 26.09.2022 of the Hon'ble NCLT, vide which the petition preferred by the respondents/allottees under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') was dismissed as withdrawn. Learned counsel for the appellant has submitted that since the petition filed by the respondents/allottees under the Code, before the Hon'ble NCLT has been dismissed as withdrawn, so, the complaint

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preferred by the appellant/promoter before the learned Authority is now required to be adjudicated on merits.

8. Learned counsel for the respondents/allottees has not disputed this fact that the petition preferred by the respondents/allottees under Section 7 of the Code has been got dismissed as withdrawn by them vide order dated 26.09.2022.

9. Admittedly, vide impugned order dated 12.02.2021 the complaint preferred by the appellant/promoter had been dismissed by the learned Authority simply on account of the fact that the matter was pending before the Hon'ble NCLT and the appellant was advised to pursue the matter before the said forum. Since, that petition filed by the respondents/allottees before the Hon'ble NCLT has been got dismissed as withdrawn, so, in these circumstances, the matter is remitted to the learned Authority for adjudication of the present lis between the parties on merits.

10. Consequently, the present appeal is hereby allowed. The impugned order dated 12.02.2021 handed down by the learned Authority is set aside. The complaint is remitted to the learned Haryana Real Estate Regulatory Authority, Gurugram, for fresh trial/decision in accordance with law. The learned

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Authority is directed to dispose of the complaint preferred by the appellant/promoter expeditiously.

11. Parties are directed to appear before the learned Authority on 03.02.2023.

12. The copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority for compliance.

13. File be consigned to the record.

Announced:
January 19, 2023

CL

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

Anil Kumar Gupta
Member (Technical)