

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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Appeal No.134 OF 2022  
Date of Decision: 26.04.2023

Emaar India Limited (Formerly known as Emaar MGF Land Limited), 306-308, 3<sup>rd</sup> 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

Appellant

Versus

Harvinder Pal Singh, resident of 16/57, West Punjabi Bagh, New Delhi 110026

Respondent

**CORAM:**

**Justice Rajan Gupta  
Shri Inderjeet Mehta  
Shri Anil Kumar Gupta**

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

Present: Mr. Kunal Dawar, Advocate assisted by  
Ms. Tanika Goyal, Advocate  
for the appellant.

Mr. Jagdeep Kumar, Advocate,  
for the respondent.

**ORDER:**

**Rajan Gupta, Chairman (Oral):**

The present appeal is directed against the order dated 15.12.2021 passed by the Haryana Real Estate Regulatory

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Authority, Gurugram (hereinafter referred as, 'the Authority) in Complaint No.3411 of 2021.

2. Complainant-Harvinder Pal Singh (respondent herein) filed complaint on 01<sup>st</sup> September, 2021 claiming the interest for delay in giving possession by the promoter to him.

3. This prayer was opposed by the appellant-M/s Emaar MGF Land Ltd. It took the stand that the complaint was based on erroneous interpretation of the provisions of the Act and incorrect understanding of the terms of agreement dated 16.05.2013. According to appellant, the respondent consciously and wilfully opted for construction linked plan for remittance of the sale consideration of the unit in question and undertook to remit such amount as per the payment schedule. The Agreement dated 16.05.2013 was executed thereafter between the appellant and the respondent.

4. According to the appellant, it applied for occupation certificate on 13.04.2018. It was ultimately issued on 05<sup>th</sup> December, 2018. The possession was offered to the respondent vide letter dated 12<sup>th</sup> December, 2018 and the unit was handed over to the respondent on 05.05.2019. Conveyance deed was executed on 09.05.2019. According to the appellant, there is no deliberate delay on its part, thus, respondent is not entitled to any delay possession interest for the alleged delay in possession. The Authority thereafter decided the matter and granted the prayer sought for in the complaint. Operative part of the order passed by the Authority reads as under:-

***"H. Directions of the authority***

*44. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to*

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*ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):*

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 14.06.2016 till 12.02.2019 i.e. expiry of 2 months from the date of offer of possession (12.12.2018). the arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.*
- ii. Also, the amount of Rs.3,08,799/- so paid by the respondent towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of provision to Section 18(1) of the Act.*
- iii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal nos.3864-3889/2020 decided on 14.12.2020."*

5. Today both learned counsel for the parties address the arguments at some length.

6. We have considered their submissions and given our careful thought to respective submissions. One issue which stands out is that the respondent entered into an agreement to sell with one Lalit Kumar Tyagi on 27.02.2021 in respect of the unit. Certain terms and conditions were added in the agreement to sell between the respondent and the subsequent purchaser of their own volition without any reference to the Builder Buyer's Agreement dated 16.05.2013. It needs to be considered whether

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such terms and conditions would stand the scrutiny of law. Pursuant to the agreement to sell, sale deed dated 16.08.2021 was also executed; the same is already on record. Perusal of the same shows that the promoter-M/s Emaar MGF Land Ltd. was not oblivious to the sale deed executed between the respondent and the subsequent purchaser. It however appears neither party bothered to implead the subsequent purchaser as a party in the proceedings. The Authority, thus, proceeded to decide the entire matter taking it as an issue between the respondent and the promoter.

7. Learned counsel for both the parties agree that on perusal of the order, it is clear that there is no reference either to agreement to sell dated 27.02.2021 or the sale deed dated 16.08.2021.

8. Thus, the order was passed in the absence of the subsequent purchaser before the Authority certain issues which would arise for consideration have not been decided. It appears that even the sale deed escaped the attention of the Authority as proper assistance was not rendered to it.

9. Under the aforesaid circumstances, Mr. Kunal Dawar, learned counsel representing the appellant submits that the matter may be remitted to the Authority for decision afresh, in order to enable it to take into consideration all the aforementioned facts and the documents in question. He further submits that an application shall be moved to implead the subsequent purchaser as a party to the matter.

10. Learned counsel for the respondent does not oppose this plea.

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11. In view of above, the order under challenge is hereby set aside. The matter is remitted to the Authority for decision fresh after considering all the issues as highlighted above after affording opportunity of hearing to all the stakeholders.

12. Parties are directed to appear before the Authority on 15.05.2023.

13. The amount of Rs.20,70,153/- 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 appellant-promoter as per the aforesaid observations, subject to tax liability, if any, according to law.

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

15. File be consigned to the record.

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal

Inderjeet Mehta  
Member (Judicial)

Anil Kumar Gupta  
Member (Technical)

26.04.2023  
Manoj Rana