

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 162 of 2022
Date of Decision: 28.04.2023

Emaar MGF Land Ltd. registered office at 306-308, Square One,
C-2 District Centre, Saket, New Delhi-110 017.

Appellant

Versus

1. Ajay Singh
2. Chetna Singh

Both residents of Zygmuntowska 6C, Krakow Poland-31-314.

Second Address:- 18/16, Sector-18, Indira Nagar,
Lucknow, Uttar Pradesh.

Respondents

CORAM:

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

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

Argued by: Ms. Tanika Goyal Advocate,
for the appellant.

Shri Kuldeep Kumar Kohli, Advocate,
for the respondents.

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 01.10.2021 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Ld.

Authority) whereby the Complaint No. 905 of 2019 filed by the respondents-allottees was disposed of with the following directions:

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 complainants from due date of possession i.e. 26.08.2013 till 26.01.2021 i.e. expiry of 2 months from the date of offer of possession (26.11.2020) as per the provisions of the Section 19(10) and proviso to section 18(1) of the Act. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.*

ii. *Also, the amount of Rs. 9,83,684/- (as per statement of account dated 26.11.2020) paid by the respondent to the complainants 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 proviso to Section 18(1) of the Act.*

iii. *The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is not entitled to claim holding charges from the complainants/allottees at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in Civil Appeal Nos. 3864-3889/2020 decided on 14.12.2020.”*

2. As per averments in the complaint, the respondents-allottees booked a unit bearing No. EEA-H-F09-06, 9th Floor,

Block H, measuring 1310 sq. ft., in the project being developed by the appellant-promoter, namely, "Emerald Estate Apartments" Sector 65, Maidawas, Gurugram, Haryana on 09.09.2009. The provisional allotment letter of the above said unit was issued on 29.09.2009. The buyer's agreement (hereinafter called as 'agreement') was executed between the parties on 18.01.2010. As per statement of account dated 26.11.2020, the respondent had paid an amount of Rs. 62,35,205/- against the total sale consideration of Rs. 56,18,939/-. The date of start of construction as per statement of account dated 26.11.2020 is 26.08.2010. According to clause 11 (a) of the agreement, the appellant-promoter is to deliver the possession of the unit within 36 months from the date of start of construction and there is also a provisions of grace period of 6 months for applying and obtaining the Completion Certificate/Occupation Certificate in respect of the unit/or the project. The Occupation Certificate was issued on 11.11.2020. The letter for offer of possession of the unit was issued on 26.11.2020.

3. The possession of the unit was delayed and was also not being handed over therefore, the respondents-allottees filed the complaint before the learned Authority claiming the following relief:-

“i. It is most respectfully prayed that this Hon’ble Authority be pleased to restrain the respondent from cancelling the unit allotted to the complainants.

ii. It is most respectfully prayed that this Hon’ble Authority be pleased to restrain the respondent from raising any fresh demand with respect to the project.

iii. It is most respectfully prayed that this Hon’ble Authority be pleased to pass any other interim relief(s) which the Hon’ble Authority thinks fit in the interest of justice and in favour of the complainants.”

4. The complaint was resisted by the appellant-promoter on the grounds of the jurisdiction of the learned Authority and on some other technical grounds.

5. It was also pleaded that a contract was executed between the appellant and M/s BL Kashyap and Sons (hereinafter called as the contractor) in the year of 01.11.2010 for construction of the said project. As per the said agreement with the contractor the start date of the project was 26.07.2010 and the scheduled date of completion of the project was 25.07.2013. It was further pleaded that the contractor was not able to meet the agreed timelines for construction of the project. The appellant-promoter issued a notice of termination dated 30.08.2015, terminating the contract. The appellant-promoter also filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 before Hon'ble High Court seeking urgent reliefs restraining the contractor from interfering with the

business activities of the appellant-promoter at the Project site along with some other reliefs. However, the parties settled the dispute during the proceedings of the aforesaid proceedings and the contractor assured the appellant that the project shall be completed within the decided timelines. That in spite of the settlement the progress of the work was not up to the mark. The Hon'ble High Court appointed Justice A P Shah (Retd.) as the Sole Arbitrator for adjudication of disputes between the appellant-promoter and the contractor. The Hon'ble High Court gave liberty to the appellant-promoter to award the contract to new agency/agencies for completing the remaining work with the permission of the Sole Arbitrator. The Arbitrator vide its order dated 27.04.2019 gave liberty to the appellant to appoint another contractor w.e.f. 15.05.2019. The delay thus caused was on account of the reasons which were beyond the control of the appellant.

6. After controverting all the pleas raised by the respondents-allottees, the appellant-promoter pleaded for dismissal of the complaint being without any merit.

7. The learned authority after hearing the pleadings of both the parties passed the impugned order, the operative part of which has already been reproduced in paragraph No.1 of this order.

8. We have heard, learned counsel for the parties and have carefully examined the record.

9. It was contended by Id. Counsel for the appellant that as per clause 11(a) of the Buyer's Agreement, the delivery of possession of the unit is to be given within 36 months plus grace period of 6 months from the commencement of the construction subject to timely payment of the instalments and compliance by the complainant of all the terms and conditions of the said agreement. Grace period cannot be denied merely on account of delay caused in completion of the project. Further grace period of 6 months is for applying and obtaining the occupation certificate in respect of the Villa/Unit. It was submitted that once an application is submitted before the statutory authority, the appellant ceases to have any control over the same. Therefore, the time taken by the concerned statutory authority to issue occupation certificate in respect of the project has to be excluded from the computation of the time taken for implementation and development of the project. Furthermore, no compensation or any interest shall be payable to the allottees in case of delay cause due to non-receipt of Occupation Certificate, Completion Certificate or any other permission/sanction from the competent authorities in conformity to the buyer's agreement. She submitted that Occupation Certificate was issued on 11.11.2020 and letter of offer of possession has been issued on 26.11.2020.

10. She stated that the interest for delay in delivery of possession to the respondents-allottees for the payment made by them prior to due date of possession i.e. 26.02.2014 should be calculated from due date of possession i.e. 26.02.2014 and the interest on payments made by them after 26.02.2014 should be calculated from the date of respective payments.

11. It was also submitted that the respondents-allottees had been defaulter and had failed to make payments on time. The respondents-allottees shall also be liable to pay interest on the payments which has been delayed by them on the same rate of interest as being granted to the respondents-allottees in case of delayed possession charges.

12. With these contentions, it was contended by the Ld. counsel of the appellant that the present appeal may be allowed and the impugned order dated 01.10.2021 may be modified accordingly.

13. Per contra, Ld. counsel for the respondents-allottees contended that the respondents-allottees have already made a total payment of Rs. 62,35,205/- against the total sale consideration of Rs. 56,18,939/- but the physical possession of the unit is yet to be given to the them and therefore the respondents-allottees may be allowed delayed possession interest till the date actual possession is handed over to them as is being allowed in some other cases.

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

15. The undisputed facts of the case are that respondent-allottee booked the unit bearing No. EEA-H-F09-06, 9th Floor, Block H, measuring 1310 sq. ft., in the project being developed by the appellant-promoter, namely, "Emerald Estate Apartments" Sector 65, Maidawas, Gurugram, Haryana on 09.09.2009. The allotment letter of the above said unit was issued on 29.09.2009. The buyer's agreement (hereinafter called as 'agreement') was executed between the parties on 18.01.2010. As per statement of account dated 26.11.2020, the respondent had paid an amount of Rs. 62,35,205/- against the total sale consideration of Rs. 56,18,939/-. According to clause 11 (a) of the agreement, the appellant-promoter is to deliver the possession of the unit within 36 months from the date of start of construction and there is also a provisions of grace period of 6 months for applying and obtaining the Completion Certificate/ Occupation Certificate in respect of the unit/or the project. The Occupation Certificate was issued on 11.11.2020. The letter for offer of possession of the unit was issued on 26.11.2020. The unit in question has not been handed over till date. The said clause 11(a) of the agreement is reproduced as below:-

"(a) Time of handing over the possession:-

“Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer’s Agreement and not being in default under any of the provisions of this Buyer’s Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 months from the date of commencement of construction and development of the Unit. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of six months, for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the project.”

16. As per aforesaid clause of the agreement, possession of the unit was to be delivered within 36 months from the date of start of construction. The date of start of construction has been considered as 26.08.2010 in the impugned order, which is not in dispute. The period of 36 months for delivery of the unit expired on 26.08.2013. As per the above said clause 11(a) of the agreement, a grace period of 6 months for obtaining Completion/Occupation Certificate etc. has been provided. The perusal of the Occupation Certificate dated 11.11.2020 placed at page no. 371 of the paper book reveals that the appellant-promoter has applied for grant of Occupation Certificate on 21.07.2020 which was ultimately granted on 11.11.2020. It is also well known that it takes time to apply and obtain Occupation Certificate from the concerned authority. As per

section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of six month for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate. Thus, with inclusion of grace period of 6 months as per the provisions in clause 11 (a) of the agreement, the total completion period becomes 42 months. Thus, the due date of delivery of possession comes out to 26.02.2014.

17. The argument of the appellant is that the interest at the prescribed rate on the payments, which have been demanded by the appellant and paid by the respondents-allottees after the due date of delivery of possession i.e. 26.02.2014, shall be payable from the date on which respective payments have been made by the respondents-allottees to the appellant-promoter. This argument of the appellant is logical and, therefore, the interest at the prescribed rate on the payments which have been

made by the respondents-allottees prior to the due date of delivery of possession i.e. 26.02.2014 shall be payable from 26.02.2014 and the payment which have been made by the respondents-allottees after the due date of delivery of possession i.e. 26.02.2014 shall be payable from the date on which respective payments have been made by the respondents-allottees to the appellant-promoter.

18. The further argument of the appellant-promoter is that the respondents-allottees had not made the payments on time and therefore shall also be liable to pay interest on the due payments which have been delayed by the respondents- allottees at the same rate as is being granted to the respondents-allottees in case of delayed possession charges. This argument of the appellant-promoter is as per the definition of interest given in the act and therefore is correct. The appellant-promoter is entitled to charge the interest at the same rate on the delayed payments as has been awarded to the respondents-allottees as delayed possession charges.

19. As per the agreement, the due date of delivery of possession of the unit to the respondents-allottees is 26.02.2014. The offer of possession of the unit was issued by the appellant on 26.11.2020. As per statement of account dated 26.11.2020, the respondents-allottees have already paid an amount of Rs. 62,35,205/- which is more than the total sale

consideration of Rs. 56,18,939/-. However, the respondents-allottees have yet not been given actual physical possession of the unit in spite of the fact that the huge amount on account of delay possession interest is payable to them. Therefore, in case the respondents-allottees are still not given possession within one month of this order then the appellant is to pay a cost of Rs. 2000/- per day to the respondents-allottees from the date of this order till the actual handing over of the unit.

20. No other point was argued before us by Ld. counsel for the parties.

21. Consequently, the present appeal filed by the appellant is partly allowed and the impugned order is modified as per the above said observations.

22. The amount of Rs. 33,21,682/- 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 respondents-allottees as per the aforesaid observations, excess amount may be remitted to the appellant, subject to tax liability, if any, as per law and rules.

23. No order as to costs.

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

25. File be consigned to the record.

Announced:
April 28, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal,

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

Rajni

Judgment, Haryana Real Estate Appellate Tribunal