

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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Appeal No. 468 of 2022  
Date of Decision: 08.05.2023

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

Appellant

Versus

1. Ravi Bhatia
2. Sujata Sharma

Both residents of Hauffstr. 8 90491, Nuremberg Germany.

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 Arun Sharma, 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 01.02.2022 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Ld. Authority') whereby the Complaint No. 3020 of 2020 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. 02.07.2013 till 26.07.2020 i.e. expiry of 2 months from the date of offer of possession (26.05.2020). 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. 6,16,784/- so 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 is directed to hand over the physical possession of the subject unit to the complainants within a period of 15 days from the date of this order.*
- iv. *The respondent is further directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to the rights of the complainants at the time of handing over of possession.*
- v. *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 respondent-allottees booked a unit bearing No. EFP-02-0501, 5<sup>th</sup> Floor, Tower No. 2, measuring 1650 sq. ft., in the project being developed by the appellant-promoter, namely, "Emerald Floors premier at Emerald Estate" Sector 65, Gurugram, Haryana. The provisional allotment letter of the above said unit was issued on 10.03.2010. The buyer's agreement (hereinafter called as 'agreement') was executed between the parties on 02.07.2010. As per statement of account dated 22.10.2020, the respondent-allottee had paid an amount of Rs. 78,23,448/- against the total sale consideration of Rs. 76,29,117/-. 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 execution of buyers agreement and there is also a provisions of grace period of 3 months for applying and obtaining the Completion Certificate/Occupation Certificate in respect of the unit/or the project.

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

*“i. Direct the respondent to hand over the possession of the subject unit and to pay interest at the rate of 24% p.a. for the delayed period in handing possession of the said unit as per the Act.”*

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. It was also submitted that construction of the project got delayed on account of the dispute with the contractor deployed by the appellant for construction of the project. The work also got delayed on account of the revision of the National Building Code, 2005 (NBC) which was revised in the year 2016, whereby, the appellant had to construct two stair cases instead of one. It was pleaded that the above said reasons for delay were beyond the control of the appellant, therefore, such delay may not be counted in period for delay.

5. It was pleaded that the occupation certificate has been issued on 15.05.2020 and offer of possession letter is also issued on 26.05.2020.

6. After controverting all the pleas raised by the respondent-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 ld. Counsel for the appellant that the interest for delay in delivery of possession to the respondent-allottees for the payment made by them prior to due date of possession i.e. 02.10.2013 should be calculated from due date of possession i.e. 02.10.2013 and the interest on payments made by them after 02.10.2013 should be calculated from the date of respective payments.

11. It was also submitted that the respondent-allottees had been defaulter and had failed to make payments on time. The respondent-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 respondent-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 01.02.2022 may be modified accordingly.

13. Per contra, Ld. counsel for the respondent-allottees contended that the respondent-allottees have already made a total payment of Rs. 78,23,448/- against the total sale consideration of Rs. 76,29,117/- but the physical possession of the unit is yet to be given to the them and therefore the

respondent-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-allottees booked the unit bearing No. EFP-02-0501, 5<sup>th</sup> Floor, Tower no. 2, measuring 1650 sq. ft., in the project being developed by the appellant-promoter, namely, "Emerald Floors Premier at Emerald Estate" Sector 65, Gurugram, Haryana. The allotment letter of the above said unit was issued on 10.03.2010. The agreement was executed between the parties on 02.07.2010. As per statement of account dated 22.10.2020, the respondent-allottees had paid an amount of Rs. 78,23,448/- against the total sale consideration of Rs. 76,29,117/-. 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 3 months for applying and obtaining the Completion Certificate/ Occupation Certificate in respect of the unit/or the project. In the impugned order, the due date of delivery of possession has been taken as 02.10.2013 i.e. by including the grace period of 3 months and there is no dispute regarding this in the present appeal. The Occupation Certificate was issued on 15.05.2020.

The letter for offer of possession of the unit was issued on 26.05.2020. The unit in question has not been handed over till date.

16. 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 respondent-allottees after the due date of delivery of possession i.e. 02.10.2013, shall be payable from the date on which respective payments have been made by the respondent-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 respondent-allottees prior to the due date of delivery of possession i.e. 02.10.2013 shall be payable from 02.10.2013 and the payment which have been made by the respondent-allottees after the due date of delivery of possession i.e. 02.10.2013 shall be payable from the date on which respective payments have been made by the respondent-allottees to the appellant-promoter.

17. The further argument of the appellant-promoter is that the respondent-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 respondent-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 respondent-allottees as delayed possession charges.

18. As per the agreement, the due date of delivery of possession of the unit to the respondent-allottees is 02.10.2013. The offer of possession of the unit was issued by the appellant on 26.05.2020. As per statement of account dated 22.10.2020, the respondent-allottees have already paid an amount of Rs. 78,23,448/- which is more than the total sale consideration of Rs. 76,29,117/-. However, the respondent-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 respondent-allottees are still not given possession within one month of this order then the appellant is to pay a cost of Rs. 1500/- per day to the respondent-allottees from the date of this order till the actual handing over of the unit.

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

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

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21. The amount of Rs. 51,44,892/- 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-allottees as per the aforesaid observations, excess amount may be remitted to the appellant, subject to tax liability, if any, as per law.

22. No order as to costs.

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

24. File be consigned to the record.

Announced:  
May 08, 2023

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal,

Inderjeet Mehta  
Member (Judicial)

Anil Kumar Gupta  
Member (Technical)