

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 433 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. Babita Tiwari
2. Yogesh Tiwari

Both are residents of H.No.41/7, DLF Phase-I, Gurugram,
Haryana-122002.

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 Ambanshu Sahni, 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 15.12.2021 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Ld.

Authority) whereby the Complaint No. 405 of 2020 filed by the respondent-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. 07.03.2014 till 14.02.2021 i.e. expiry of 2 months from the date of offer of possession (14.12.2020). 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. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The rate of interest chargeable from the complainants/allottees by the promoter, in case of default shall be charged at the prescribed rate i.e. 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) 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 shall not demand/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-III-44-0301, 3rd floor, building no. 44, measuring 1975sq. ft., in the project being developed by the appellant-promoter, namely, “Emerald Floors Premier III at Emerald Estate”, Sector 65, Gurugram, Haryana. The provisional allotment letter of the above said unit was issued on 28.09.2011. The buyer’s agreement (hereinafter called as ‘agreement’) was executed between the parties on 07.03.2012. As per statement of account dated 29.11.2021, the respondent had paid an amount of Rs. 1,15,85,565/- against the total sale consideration of Rs. 1,35,94,337/-. According to clause 11 (a) of the agreement, the appellant-promoter is to deliver the possession of the unit within 24 months from the date of execution of the agreement and there is also a provisions of grace period of 3 months for applying and obtaining 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 refrain to give effect to unfair, unilateral, arbitrary and one-sided clauses of agreement i.e. offer of possession and compensation on delay possession etc.

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ii. Direct the respondent to give possession of floor/flat within six months of filing of this complaint (duly completed with proposed and agreed amenities).

iii. Direct the respondent to give delayed possession interest from due date of possession till handing over the possession.

iv. Direct the respondent to provide valid occupation certificate (without any pre-conditions).

v. Any other relief/direction which the hon'ble authority deems fit and proper in the facts & circumstances of the present complaint"

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 11.11.2020 and offer of possession is also issued on 14.12.2020.

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 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 24 months plus grace period of 3 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 3 months is for applying and obtaining the occupation certificate in respect of the 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 caused 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 14.12.2020 and the respondent-allottees has taken over the possession on 25.01.2023.

10. She stated 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. 07.06.2014 should be calculated from due date of possession i.e. 07.06.2014 and the interest on payments made by them after 07.06.2014 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 15.12.2021 may be modified accordingly.

13. Per contra, Ld. counsel for the respondent-allottees contended that the impugned order passed by the learned Authority is just and fair and is as per the Act and rules. There is no merit in the appeal and the same deserves to be dismissed.

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-III-44-0301, 3rd Floor, building no. 44, measuring 1975 sq. ft., in the project being developed by the appellant-promoter, namely, "Emerald Floors Premier III at Emerald Estate", Sector 65, , Gurugram, Haryana. The agreement was executed between the parties on 07.03.2012. As per statement of account dated 29.11.2020, the respondent-allottees had paid an amount of Rs. 1,15,85,565/- against the total sale consideration of Rs. 1,35,94,337/-. According to clause 11 (a) of the agreement, the appellant-promoter is to deliver the possession of the unit within 24 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 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 14.12.2020. The

possession of the unit in question has been handed over to the respondent-allottees on 25.01.2023. 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 24 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 three 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 24 months from the date of execution of the agreement i.e. by 07.03.2014. As per the above said clause 11(a) of the agreement, a grace period of 3 months for obtaining Occupation Certificate etc. has been provided. The perusal of the Occupation Certificate dated 11.11.2020 placed at page no. 317 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 three months 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 3 months as per the provisions in clause 11 (a) of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014.

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 respondent-allottees after the due date of delivery of possession i.e. 07.06.2014, 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. 07.06.2014 shall be payable from 07.06.2014 and the payment which have been made by the respondent-allottees after the due date of delivery of possession i.e. 07.06.2014 shall be payable from the date on which respective payments have been made by the respondent-allottees to the appellant-promoter.

18. 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 respondent-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.

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

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

21. The amount of Rs. 74,86,115/- 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)