

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 280 of 2022

Date of Decision: 17.04.2023

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-Promoter

Versus

Mr. Ved Prakash Sharma, R/o H.No.163 Boulevard Du Lac, The Beverly Hills 23, Sam Mun Tsai Road, Tai Po Hong Kong.

2nd Address:

163, South City Part-I, Gurugram.

Respondent-Allottee

CORAM:

Justice Rajan Gupta
Shri Inderjeet Mehta
Shri Anil Kumar Gupta

Chairman
Member (Judicial)
Member (Technical)

Present: Ms. Tanika Goyal, Advocate,
for the appellant-promoter.

Mr. Ambanshu Sahni, Advocate
for the respondent-allottee.

ORDER:

ANIL KUMAR GUPTA, MEMBER (TECHNICAL):

The present appeal has been preferred under Section 44(2) of the Real Estate (Regulation and

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Development) Act 2016 (further called as, 'the Act') by the appellant-promoter against impugned order dated 14.12.2020 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Ld. Authority') whereby the Complaint No.989 of 2020 filed by the respondent-allottee 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 complainant from due date of possession i.e. 03.11.2013 till the handing over of possession.*
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till handing over of possession shall be paid before 10th of each subsequent month.*
- iii. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.*
- iv. Interest on the due payments from the complainant shall be charged at the prescribed rate @9.30% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges*

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2. As per averments in the complaint, the respondent-allottee was allotted the unit bearing No.EFP-II-55-0301 measuring 1975 sq. ft., at 55th floor in the project being developed by the appellant-promoter, namely, “Emerald Floors Premier” at Emerald Estate, Sector 65, Gurugram. The Buyer’s Agreement (for short, ‘the Agreement’) was executed on 03.08.2010. As per statement of account dated 26.03.2020, the respondent-allottee had paid an amount of Rs.90,48,465/- against the total sale consideration of Rs.1,05,72,389/-. According to Clause 11(a) of the Agreement, the appellant-promoter was to deliver the possession of the unit within 36 months from the date of execution of the agreement plus grace period of three months, which comes out to 03.11.2013. The delivery of the unit was being delayed and, therefore, the respondent-allottee filed the complaint before the Ld. Authority *inter alia* claiming the following reliefs:

- “i. Direct the respondent to pay delay interest on the amount paid by the complainant at prescribed rate as per the provisions of the Act and the Rules.*
- ii. Direct the respondent to deliver the possession of the unit as promised in buyer's agreement.”*

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3. The complaint was resisted by the appellant-promoter on the grounds of the jurisdiction of the learned Authority and on some other technical grounds. After controverting all the pleas raised by the respondent-allottee, the appellant-promoter pleaded for dismissal of the complaint being without any merit.

4. 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.

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

6. At the outset, it was contended by learned counsel for the appellant-promoter that the interest for delay in delivery of possession to the respondent-allottee for the payment made by him prior to due date of possession i.e. 03.11.2013 should be calculated from due date of possession i.e. 03.11.2013 and the interest on payments made by him after 03.11.2013 should be calculated from the date of respective payments.

7. It was also stated that in the present case the total amount of Interest as calculated by the registry of this Tribunal comes to Rs. 59,32,377/-. The amount of compensation already credited in the account of the allottee is Rs.7,46,712/- which is evident from Entry 73

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in statement of account dated 15.04.2021 (Enclosure-H) placed at page No. 231 of the paper book. Thus, the said amount of Rs.7,46,712/- is liable to be refunded to appellants alongwith interest.

8. It was further contended that a contract was allotted to M/s BL Kashyap and Sons (hereinafter called as the contractor) on 01.11.2010 for construction of the said project. As per the said agreement with the contractor the start date of the project was July-August, 2010 and the scheduled date of completion of the project was July-August 2013. It was further contended that the contractor was not able to meet the agreed timelines for construction of the project. The progress of work at the project site was extremely slow on account of various defaults on the part of the contractor. The appellant-promoter issued a notice of termination dated 16.01.2015, 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 dispute with the contractor was settled during the pendency of the aforesaid proceedings before the Hon'ble High Court.

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However, the contractor did not amend its ways, and persistently defaulted in meeting the agreed timelines of the contract. Since, the contractor was going very slow so the appellant-promoter was constrained to terminate the contract with the contractor vide termination notice dated 30.8.2018. After termination of the contract, the appellant-promoter filed a petition against the contractor before the Hon'ble Delhi High Court seeking interim protection against the contractor so that the contractor does not disturb the progress of work at the site. Similar petition was also filed by the contractor against the appellant-promoter.

9. The Hon'ble High Court disposed of the said cases and issued several directions. 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. The appellant-promoter after continuous efforts was successful in attaining occupation certificate for the whole project on 11.11.2020. It was further contended that there is no default or lapse on the part of the appellant-promoter. It is evident from the entire sequence of events, that the delay in handing over of the

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possession of the unit is on account of the above said reasons which were beyond the control of the appellant-promoter and, thus, the delay in handing over of the possession of the unit cannot be attributed to the appellant-promoter.

10. Ld. counsel for the appellant contended that as per the provisions contained in section 19 of the Act, it is obligatory on the part of the respondent-allottee to take the physical possession of the unit within a period of two months of the date of issuance of the occupation certificate pertaining to the said unit. She contended that the Hon'ble Supreme Court (Constitution Bench) in Gurpreet Singh Vs Union of India, appeal (Civil) 4570 of 2006 decided on 19.10.2006 has held that interest ceases to run on the amount deposited, to the extent of the deposit. She further stated that order 24 rule 3 of The Code of Civil Procedure (for short 'the CPC') specifically states that no interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of such deposit, whether the sum deposit is in full discharge of the claim or it falls short thereof.

11. 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 14.12.2020 may be modified accordingly.

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12. Per contra, Ld. counsel for the respondent-allottee contended that the possession of the unit has been handed over on 31.03.2022 after the order dated 07.03.2022 passed by this Tribunal and contended that the impugned order passed by the learned Authority is in order and is as per the Act, Rules and Regulations and prayed for dismissal of the appeal.

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

14. The undisputed facts of the case are that the unit bearing No.EFP-II-55-0301 measuring 1975 sq. ft., at 55th Floor in the project being developed by the appellant-promoter, namely, "Emerald Floors Premier" at Emerald Estate, Sector 65, Gurugram. The Buyer's Agreement was executed on 03.08.2010. As per statement of account dated 26.03.2020, the respondent-allottee had paid an amount of Rs.90,48,465/- against the total sale consideration of Rs.1,05,72,389/-. According to Clause 11(a) of the Agreement, the appellant-promoter was to deliver the possession of the unit within 36 months from the date of execution of the agreement plus grace period of three months, which comes to 03.11.2013.

15. The argument of the appellant is that the interest at the prescribed rate on the payments, which

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have been demanded by the appellant and paid by the respondent-allottee after the due date of delivery of possession i.e. 03.11.2013, shall be payable from the date on which respective payments have been made by the respondent-allottee 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-allottee prior to the due date of delivering of possession shall be payable from the due date of delivering of possession i.e. 03.11.20213 and the interest at the prescribed rate after the due date of delivery of possession i.e. 03.11.2013 shall be payable from the date on which respective payments have been made by the respondent-allottee to the appellant-promoter.

16. The appellant-promoter has pleaded that during the period of agreement, and thereafter, up to the possession of the unit to the respondent-allottee, the contractor deployed by the appellant-promoter for execution of the work delayed the construction and there was litigation between the appellant-promoter and the contractor. This litigation between the appellant-promoter and the contractor also went up to the Hon'ble Delhi High Court and thereafter before the Arbitrator so appointed by the Hon'ble High Court. This Tribunal is of

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the considered view that there is no fault of the respondent-allottee in the litigation going on between the appellant-promoter and the contractor deployed by it. Thus, we are of the considered opinion that since there is no fault of the respondent-allottee, and therefore, no benefit on account of any delay caused by the contractor of the appellant-promoter and delay on account of the litigation going on between the appellant-promoter and its contractor can be granted to the appellant-promoter.

17. Regarding the contention of the learned council for the appellant that as per order 24 rule 3 of the CPC and as per the judgment of Hon'ble Supreme Court (Constitution Bench) in Gurpreet Singh Vs Union of India (Supra), the interest ceases to run on the amount deposited to the extent of the deposit is not correct and the said judgement of the Hon'ble Supreme Court is quite distinguishable from the present case. In the present case as per the agreement the possession of the unit was to be handed over by the appellant to the respondent allottee on or before 03.11.2013. As per the statement of account dated 26.03.2020, the respondent allottee had paid an amount of Rs.90,48,465/- against the total sale consideration of Rs.1,05,72,389/-. The appellant issued offer of possession vide its letter dated 19.11.2020 to the

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respondent. As per the said letter of offer of possession the appellant will only hand over the possession to the respondent- allottee on deposit of the amount of Rs.21,23,105/- (Emaar MGF Land A/c Emerald Estate Rs.15,72,88/- plus Emaar MGF Land A/c Emerald Estate Rs.51,747/- plus E. E. Condominium Association A/C EFP Rs.82,950/- plus Registration Charges of Rs.50,000/-). Whereas, at the time of issue of offer of possession letter the amount paid by the respondent allottee plus the delay possession interest is much higher than the amount demanded by the appellant. Also, as per proviso to Section 18 of the Act, in case of delay, the interest at prescribed rate shall be payable till the handing over of the possession. The judgment of the Hon'ble Supreme Court of India in case **Gurmeet Singh vs. Union of India** (Supra) relied upon by the appellant is distinguishable in the facts and circumstances of the present case and on account of our aforesaid observations. Therefore, we find nothing wrong in the impugned order passed by the Ld. authority for grant of the prescribed rate of interest from due date of possession till handing over of the possession.

18. It was stated by the Ld. Counsel for the appellant that an amount of Rs.7,46,712/- as

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compensation on account of delay in delivery of possession has already been credited into the account of the respondent- allottee which is evident from Entry at Sr No 73 in statement of account dated 15.04.2021 placed at page 231 of the paper book. Therefore, the said amount of Rs.7,46,712/- is required to be refunded to the appellant. This argument of the applicant was not controverted by the Ld. counsel for the respondent- allottee. Therefore, the said amount of Rs.7,46,712/- already paid by the appellant on account of delay in delivery of possession be adjusted from the delay possession interest payable to the respondent- allottee.

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.

21. The amount of Rs.59,32,377/- 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- allottee as per the aforesaid observations, excess amount

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may be remitted to the appellant, subject to tax liability, if any, as per law and rules.

22. No order as to costs.

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

24. File be consigned to the record.

Announced:
April 17, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

Manoj Rana