

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 106 of 2020
Date of Decision: 23.02.2023

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

2nd Address Corporate Office, Emaar Business Park, MG Road, Sikandarpur, Sector 28, Gurugram (Haryana) 122 002

Appellant

Versus

Satish Kumar Chawla, R/o House No. 60 Cedar Drive, Towne Sohna Road, Gurugram, Haryana.

Respondent

CORAM:

Justice Rajan Gupta
Shri Inderjeet Mehta
Shri Anil Kumar Gupta

Chairman
Member (Judicial)
Member (Technical)

Present: Shri Yashvir Singh Balhara, Advocate,
for the appellant.

Shri Viraj Gandhi, Advocate,
for the respondent.

ORDER:

Rajan Gupta, Chairman:

On the last date of hearing, the following order was passed:-

“Mr. Verma, submits that he does not press the appeal in view of the judgment passed by the Hon’ble Apex Court in case of M/s Newtech Promoters and Developers Pvt. Ltd. v. State of UP & others 2021 SCC Online SC 104.

He points out that as per the report of this Tribunal, the amount of pre-deposit was to be

made in terms of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016. The same has been calculated from the date of execution of Builder Buyer's Agreement dated 27.12.2010, while it should have been from the due date of possession i.e. 27.10.2013 plus grace period.

The Registry of this Tribunal is directed to examine the issue and submits a report by tomorrow.

Adjourned to 23.02.2023."

2. Today, a report has been submitted by the Registry, that the appellant has deposited an amount of Rs. 39,87,196/- to comply with the proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 for payment of interest w.e.f 27.12.2010 to 27.01.2018 on account of delay in handing over the possession to the respondent-allottee as per the impugned order.

3. Though, the appellant does not press the appeal but he prays that the correction in the due date of possession of the unit be made which has been wrongly mentioned as 27.11.2010 in the impugned order while relevant date is 27.10.2013.

4. Ld. counsel appearing for the respondent does not controvert this contention.

5. In view of the above, while dismissing this appeal, we direct that necessary correction in the aforesaid terms is made in the impugned order.

6. There was delay in filing and refiling of the appeal and on the statement of learned counsel for the

respondent that he has no objection if the application for condonation of delay in filing and refiling of the appeal is allowed, subject to heavy costs. Vide our order dated 20.04.2021, delay in filing and refiling of the appeal was condoned subject to payment of Rs. 50,000/- as costs payable to the respondent-allottee. The same has also not been paid by the appellant to the respondent-allottee, which is also payable to him.

7. Thus, the application for condonation of delay does not survive and the same is dismissed. Consequently, the appeal also needs the same fate. Appeal No. 106 of 2022 is accordingly dismissed.

8. The amount of Rs.39,87,196/- deposited by the appellant with this Tribunal to comply with the provisions of proviso to section 43(5) of the Real Estate (Regulation and Development) Act, 2016, along with interest accrued thereon, be sent to the learned Authority, Gurugram for disbursement to the respondent-allottee as per the above said observations and the excess amount, may be remitted to the appellant subject to tax liability, if any, according to law.

Justice Rajan Gupta
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

23.02.2023
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