

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 300 of 2022
Date of Decision: 16.03.2023

Emaar MGF Land Limited, 306-308, Square One, C-2,
District Centre, Saket, New Delhi-110017.

2nd Address:

Corporate Office, Emaar Business Park, MG Road,
Sikanderpur, Sector 28, Gurugram (Haryana) 122002

Appellant-Promoter

Versus

Rahul Chawla resident of C-294, Defence Colony, New
Delhi-110024.

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.

Shri Harshit Goyal, 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
Development) Act 2016 (further called as, 'the Act') by the

Appeal No. 300 of 2022

appellant-promoter against impugned order dated 29.07.2021 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Ld. Authority') whereby the Complaint No.200 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. 22.02.2014 till 09.03.2020 i.e. expiry of two months from the date of offer of possession (09.01.2020). The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16 (2) of the Rules.*
- ii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is not entitled to claim holding charges from the complainant/allottee 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.3864-3899/2020 decided on 14.12.2020.*
- iii. The complainant is directed to pay outstanding dues, if any after adjustment of interest for the delayed period.*

Appeal No. 300 of 2022

iv. The rate of interest chargeable from the allottee 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 delayed possession charges as per Section 2(za) of the Act.

2. As per averments in the complaint, the appellant-promoter issued an allotment letter dated 30.04.2010 for the Apartment No.PH4-69-0101 measuring 1950 Sq. ft., at First Floor, Building No.69 in its project, namely, Palm Hills, Sector 77, Gurugram in the name of respondent-allottee. The Buyer's Agreement (for short, Agreement) was executed on 22.12.2010. According to Clause 11(a) of the Agreement, the appellant-promoter was to deliver the possession of the unit within 33 months from the date start of construction. There is also a provision grace period of three months for applying and obtaining completion certificate/occupation certificate in the above said clause of the agreement. As per Statement of Account dated 27.03.2020, the respondent-allottee had paid an amount of Rs.86,79,000/- against the total sale consideration of Rs.92,51,773/-. The Occupation Certificate (for short, 'OC') was received by the appellant-

Appeal No. 300 of 2022

promoter on 24.12.2019. Since the appellant-promoter did not offer the possession within stipulated period, therefore, the respondent-allottee filed the complaint before the learned Authority seeking following reliefs:

“i. Direct the respondent to pay delay possession charges at the prescribed rate of interest to the complainant for the period of delay in delivery of the possession of the booked unit.

ii. Any other relief which this Hon’ble Authority deems fit and proper.

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. Initiating the arguments, it was contended by learned counsel for the appellant-promoter that as per

Clause 11(a) of the agreement, the possession of the unit is to be handed over within a period of 33 months plus grace period of 3 months, from the date of start of construction subject to timely payment of instalments and compliance by the respondent-allottee of all the terms and conditions of the agreement. The grace period of three months provided in the agreement cannot be denied merely on account of delay caused in completion of the project. Further grace period of three months is for applying and obtaining the occupation certificate in respect of the Villa/Unit. She asserted 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 is required to be excluded from the computation of the time taken for implementation and development of the project. Therefore, no compensation or any interest shall be payable to the allottees in case of delay caused due to delay in granting occupation certificate, completion certificate or any other permission/sanction required from the competent authorities as per the view taken in the judgment passed by this Tribunal in Appeal No. 431 of 2021, Emaar India Ltd. Vs. Dr. Ashok Kumar Vaid.

Appeal No. 300 of 2022

7. It was stated that the respondent-allottee shall be entitled for interest for delay in delivery of possession on the payment received prior to due date of possession i.e. 22.05.2014 should be calculated from due date i.e. 22.05.2014 and the interest on payments received after 22.05.2014 should be from the date of receipt of respective payments.

8. It was further asserted that further Interest on payments made after 09.03.2020 will not be paid since the same are paid after the cut-off date mentioned in the order of the learned Authority i.e. 09.03.2020.

9. It was further contended that respondent-allottee had been a defaulter and had deliberately failed to make payments on time. The respondent- allottee shall also be liable to pay interest on the payments as is being granted to the respondent-allottee in case of delayed possession charges.

10. 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 29.07.2021 may be modified accordingly.

11. Per contra, Ld. counsel for the respondent-allottee contended that the despite the orders of the ld.

Appeal No. 300 of 2022

Authority, the possession of the unit has still not been offered to the respondent-allottee 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.

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

13. The undisputed facts of case are that the appellant-promoter issued an allotment letter dated 30.04.2010 for the apartment No.PH4-69-0101 measuring 1950 Sq. ft., at First Floor, Building No.69 in its project, namely, Palm Hills, Sector 77, Gurugram in the name of respondent-allottee. As per statement of account dated 27.03.2020, the respondent-allottee had paid an amount of Rs.86,79,000/- against the total sale consideration of Rs.92,51,773/-. The OC was received by the appellant-promoter on 24.12.2019. The appellant issued offer of possession on 09.01.2020. The Agreement was executed on 22.12.2010. According to Clause 11(a) of the Agreement, the appellant-promoter was to deliver the possession of the unit within 33 months from the date start of construction. There is also a provision of grace period of three months for applying and obtaining OC/CC

in respect of the unit and /or the project. 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 33 months from the date of start of construction, subject to timely compliance of the provisions of the Buyer’s Agreement by the Allottee. 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.”

14. As per the aforesaid clause of the Agreement, the possession of the unit was to be delivered within 33 months from the date of start of construction and there is a provision of a grace period of three months for obtaining the completion/occupation certificate etc. There is no dispute regarding the date of start of construction which has been reckoned from 22.05.2011. It is well known that

Appeal No. 300 of 2022

it takes time to obtain Occupation Certificate from the concerned authorities after applying the Occupation Certificate. So, the appellant/promoter is entitled to avail grace period so provided as per the provision in the said clause 11(a) of the Agreement for obtaining the Occupation Certificate. Thus, with inclusion of the grace period of three months as per provision in Clause 11(a) of the Agreement, the total completion period has become 36 months and therefore schedule date of completion comes out to be as 21.05.2014.

15. The further 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-allottee after the due date of delivery of possession i.e. 21.05.2014, 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 after the due date of delivery of possession i.e. 21.05.2014 shall be payable from the date on which respective payments have been made by the respondent-allottee to the appellant-promoter.

Appeal No. 300 of 2022

16. The other argument of the appellant-promoter is that the respondent-allottee 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-allottee at the same rate as is being granted to the respondent-allottee 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-allottee as delayed possession charges.

17. As per the agreement, the due date of delivery of possession of the unit to the respondent-allottee is 21.05.2014. The offer for possession of the unit was issued by the appellant on 09.01.2020. As per statement of account dated 27.03.2020, the respondent-allottee has already paid an amount of Rs.86,16,345/- against the total sale consideration of Rs.92,51,773/-. However, the respondent-allottee has yet not been given actual physical possession of the unit in spite of the fact that huge amount, much more than payable by them to the appellant, on account of delay possession interest is payable to them. Therefore, in case the respondent-

allottee is still not given possession within one month of this order then the appellant is to pay a cost of Rs.2,000/- per day to the respondent-allottee from the date of this order till the actual handing over of the unit. The amount payable to the appellant by the respondent-allottee shall be adjusted from the amount deposited by the appellant with this Tribunal in compliance to Section 43(5) of the Act, at the time of disbursement of the said amount.

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

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

20. The amount of Rs.48,45,242/- 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 may be remitted to the appellant, subject to tax liability, if any, as per law and rules.

21. No order as to costs.

Appeal No. 300 of 2022

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

23. File be consigned to the record.

Announced:
March 16, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

Manoj Rana