

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.335 of 2020
Date of Decision: 24.03.2023

Emaar MGF Land Ltd. registered office at #2564, Sector 21,
Panchkula.

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

...Appellant-Promoter

Versus

1. Ashwani Madan;
2. Ritu Madan;

Both residents of J-1854, Chittaranjan Park, New Delhi
110 019

...Respondents-Allottees

CORAM:

**Justice Rajan Gupta (Retd.)
Shri Inderjeet Mehta
Shri Anil Kumar Gupta**

**Chairman
Member (Judicial)
Member (Technical)**

Argued by: Shri Kunal Dawar, Advocate,
Ld. counsel for the appellant-promoter.

Shri Sanjeev Sharma, Advocate,
Ld. counsel for the respondents-allottees.

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 29.05.2019 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Ld. Authority') whereby Complaint No.1410 of 2018 filed by the respondents-allottees was disposed of with the following directions:

"40. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under Section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:

- i. "The respondent is directed to pay delay possession charges at the prescribed rate of 10.65% per annum for every month of delay from the due date of possession i.e. 16.07.2013 till the date of offer of possession i.e. 27.01.2018.*
- ii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. And the promoter shall not charge anything from the complainant which is not part of builder buyer agreement.*
- iii. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.65% by the promoter which is the same as is being granted to the complainant in case of delayed possession.*
- iv. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.*

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41.As the project is registerable and has not been registered by the promoter, the authority has divided to take suo moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent under Section 59 of the Act ibid. A copy of this order be endorsed to registration branch for further action in the matter.”

2. As per averments in the complaint, the respondents-allottees booked a retail shop/office space bearing No.EPS-GF-028 measuring 575.41 sq. ft. in the project of the appellant-promoter “Emerald Plaza Retail in Emerald Hills” in Sector 65, Gurugram on 23.11.2009. The Space Buyers Agreement (for short, the Agreement) was executed between the parties on 16.11.2010. The total sale consideration of the unit was Rs.47,23,544/- against which the respondents-allottees had paid an amount of Rs.47,33,995/-. As per clause 16(a) of the Agreement, the due date of delivery of possession is 30 months plus 120 days from the date of execution of the Agreement which comes out to 16.07.2013. The Occupation Certificate (for short, ‘the OC’) was received by the appellant-promoter on 08.01.2018 and the possession was offered on 27.01.2018.

3. It was pleaded by the respondents-allottees in the complaint that the project of the appellant-promoter was delayed and the respondents-allottees visited the construction site and the office of the appellant-promoter several times to inquire about the reasons of slow construction and date for

handing over of the possession of the unit. It was further pleaded in the complaint that in the offer of possession letter there is no mention of delay possession interest, compensation for delay possession etc. Also, there was an additional demand for payment, and, therefore, the respondents-allottees filed the complaint before the Ld. Authority seeking the following reliefs:-

- I. The complainant requests the authority to order refund of the money charged on account of increased unit area without the consent obtained and moreover the increased area is part of common area and not carpet area of the unit.*
- II. The promoter has sold that super area which includes the common areas. The monetary consideration should have been only for carpet area. The excess amount on account of any area in excess of carpet area of the unit should be ordered to be refunded back to the complainant with interest.*
- III. The promoter shall make payment of interest accrued on account of delayed offer of possession of five years @24% as charged him from the allottees on delayed payments if any.*
- IV. The amount of GST service tax etc collected from the complainant, which accrued for the reason of delayed offer of possession be refunded back to the complainant.*

V. *Any common area car parking including Basement car park, which is not garage if sold than the money collected on such account shall be refunded along with interest.”*

4. The complaint was contested by the appellant-promoter on the ground of jurisdiction of the Ld. Authority and on some other technical grounds.

5. It was also pleaded by the appellant-promoter that the respondents-allottees were offered possession of the unit through its letter dated 27.01.2018. The respondents-allottees were called upon to remit the balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the office space to the respondents-allottees. However, the respondents-allottees did not take any step to complete the necessary formalities or to pay the balance amount liable to be payable by them.

6. After controverting all the pleas raised by the respondents-allottees, the appellant-promoter pleaded for dismissal of the complaint being without any merit.

7. The Ld. authority after considering the pleadings of the parties passed the impugned order, the relevant part of which has already been reproduced in the upper part of this appeal.

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8. We have heard Ld. counsel for the parties and have carefully examined the record. During the course of arguments, on 13.02.2023 the appellant-promoter has submitted its written submissions.

9. Initiating the arguments Ld. counsel for the appellant-promoter has contended that the Agreement between the parties was executed on 16.09.2010. As per Clause 16(a) of the Agreement, the due date of delivery of possession is 30 months plus 120 days from the date of execution of the agreement which comes out to 16.07.2013. The OC was received on 08.01.2018, the possession was offered on 27.01.2018 and the conveyance deed has been executed on 07.09.2018.

10. It was further contended that the delayed possession interest on the payments made after due date of possession should be from the date such payments have been made by the respondents-allottees to the appellant-promoter. He contended that the Statement of Account dated 07.10.2022 placed at page No.155 of the paper-book indicates such payments made by the respondents-allottees after the due date of delivery of possession.

11. It was further contended that the respondents-allottees had not made payment on time, and, therefore, shall also be liable to pay interest on the due payments which have

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been delayed by the respondents- allottees at the same rate as is being granted to the respondents-allottees in case of delayed possession charges.

12. It was further contended by Ld. counsel for the appellant-promoter that the reliefs sought in this appeal are the same as per the decision taken by this Tribunal in Appeal No.609/2019 tilted as "Emaar India Ltd. v. Ved Prakash Ahuja" on 19.12.2022.

13. The appellant-promoter has raised the issue of the jurisdiction of the learned authority and some other technical grounds in the grounds of appeal. However, the appellant-promoter has not pressed these pleas on account of the Judgment of Hon'ble Apex Court in the case M/s New Tech Promoters and Developers Pvt. Ltd. v. State of UP & others 2021 SCC online SC 1044.

14. With these contentions, it was contended that the present appeal may be allowed and the impugned order dated 29.05.2019 may be modified accordingly.

15. Per contra, Ld. counsel for the respondents- allottees contended that this Tribunal has passed orders in various appeals deciding similar issue and, therefore, this appeal may be decided in accordance with orders passed in those appeals.

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

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17. The undisputed facts of the case are that the retail shop/office space No.EPS-GF-028 measuring 575.41 sq. ft. was booked by the respondents-allottees in the project of the appellant-promoter “Emerald Plaza Retail in Emerald Hills” in Sector 65, Gurugram on 23.11.2009. The Agreement was executed between the parties on 16.11.2010. The total sale consideration of the unit was Rs.47,23,544/- against which the respondents-allottees had paid an amount of Rs.47,33,995/-. As per clause 16(a) of the Agreement the due date of delivery of possession is 30 months plus 120 days from the date of execution of the Agreement which comes out to 16.07.2013. The OC was received by the appellant-promoter on 08.01.2018, the possession was offered on 27.01.2018 and conveyance deed has been executed on 07.09.2018.

18. During the course of arguments, on 13.02.2023, learned counsel for the appellant had stated that the matter has already been settled by the judgment delivered by this Tribunal in “Emaar India Ltd. versus Ved Praksh Ahuja” bearing Appeal No.609 of 2019. The order dated 13.02.2023 passed by this Tribunal is reproduced as below:

“Learned counsel for the appellant has stated that according to him the matter has already been settled by the judgment delivered in “Emaar India Ltd. versus Ved Prakash Ahuja” bearing Appeal No.609 of 2019.

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Learned counsel for the respondent does not dispute the ratio of the aforesaid judgment in Emmar India Ltd.'s case supra. However, he has referred to various provisions necessary for disposal of the case.

Arguments heard.

Order reserved."

19. There are certain payments which the respondents - allottees have made after the due date of delivery of possession. It is the contention of the appellant-promoter that the interest at the prescribed rate on the payments, which have been made after the due date of possession i.e. 16.07.2013 shall be payable from the date on which the respective payments have been made. The relevant part of the Statement of Account dated 07.10.2022 placed at Page No.155 of the paper-book indicating the payments made by the respondents-allottees after the due date of delivery possession is reproduced as under:

Sr. No.	Date	Amount (Rs.)
1	31.08.2013	4,16,277/-
2	05.10.2013	2,08,862/-
3	13.11.2013	1,60,000/-
4	13.11.2013	48,862/-
5	12.05.2017	42,378/-
6	19.07.2017	2,25,561/-
7	19.09.2019	2,01,396/-
8	26.09.2017	24,167/-,
9	27.01.2018	5,748/-
10	25.02.2018	1,00,285/-
11	01.03.2018	10,689/-

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20. In view of the judgment/order delivered by this Tribunal in the matter *Emaar India Ltd. versus Ved Prakash Ahuja*” bearing Appeal No.609 of 2019 and logically also, the interest at the prescribed rate on the payments which have been made by the respondents-allottees after the due date of delivery of possession i.e. 16.07.2013 shall be payable from the date on which respective payments have been made by the respondents-allottees to the appellant-promoter.

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

22. No other issue was pressed before us.

23. Thus, keeping in view of our above discussions, the present appeal is allowed as per the aforesaid observations and the impugned order is modified accordingly.

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24. The amount of Rs.22,82,379/- 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 respondents-allottees as per the aforesaid observations, excess amount may be remitted to the appellant-promoter, subject to tax liability, if any, as per law and rules.

25. No order as to costs.

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

27. File be consigned to the record.

Announced:
March 24, 2023

Justice Rajan Gupta (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

Manoj Rana