

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 123 of 2022
Date of Decision: 17.04.2023

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

Appellant

Versus

Ved Prakash Sharma House No. 163, Boulevard DU LAC, The
Beverly Hills, 23 SAM MUM TSAI Road, TAI Po, Hong Kong.

Respondent

CORAM:

Shri Justice Rajan Gupta
Shri Inderjeet Mehta
Shri Anil Kumar Gupta

Chairman
Member (Judicial)
Member (Technical)

Argued by: Shri Mayank Aggarwal, Advocate,
Ld. counsel for the appellant.
Shri Ambanshu Sahni, Advocate,
Ld. counsel for the respondent.

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 12.10.2021 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Ld.

Authority) whereby the Complaint No. 399 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 complainants from due date of possession i.e. 11.05.2017 till 24.12.2019 i.e. expiry of 2 months from the date of offer of possession (24.10.2019). 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. *Also, the amount of Rs. 3,96,493/- so paid by the respondent to the complainants towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to Section 18(1) 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 is not entitled to 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. 3864-3899/2020 decided on 14.12.2020.”*

2. As per averments in the complaint, the respondent-allottee booked the unit bearing No. IG-05-1102, measuring 2000 sq. ft., at 11th Floor, tower no. 5, in the project being

developed by the appellant-promoter, namely, "Imperial Gardens" Sector 102, Gurugram, Haryana on 26.10.2012. The allotment letter of the above said unit was issued on 28.02.2013. The buyer's agreement (hereinafter called as 'agreement') was executed between the parties on 28.05.2013. As per statement of account dated 17.02.2020, the respondent had paid an amount of Rs. 1,48,82,033 against the total sale consideration of Rs. 1,48,65,211. The date of start of construction as per statement of account dated 17.02.2020 is 11.11.2013. According to clause 14 (a) of the agreement, the appellant-promoter is to deliver the possession of the unit within 42 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 Completion Certificate/Occupation Certificate in respect of the unit/or the project. The Occupation Certificate was issued on 17.10.2019. The letter for offer of possession of the unit was issued on 24.10.2019. The unit has been handed over to the respondent-allottee on 09.01.2020 and the conveyance deed has been executed on 23.01.2020.

3. The possession of the unit was delayed and, therefore, the respondent-allottee filed the complaint before the learned Authority claiming the following relief.

"i. Direct the respondent to make payment of delay penalty as prescribed under RERA w.e.f. 27.11.2016

up to the actual delivery of possession of the apartment which is 09.01.2020.”

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

5. 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.

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

7. It was contended by Id. Counsel for the appellant that as per clause 14 of the Buyer's Agreement the delivery of possession of the unit is to be given within 42 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 Villa/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 cause 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.

8. He stated 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. 11.08.2017 should be calculated from due date of possession i.e. 11.08.2017 and the interest on payments made by him after 11.08.2017 should be calculated from the date of respective payments.

9. It was also submitted that the respondent-allottee had been defaulter and had failed to make payments on time. The respondent-allottee shall also be liable to pay interest on the payments which has been delayed by him on the same rate of interest as being granted to the respondent-allottee in case of delayed possession charges. He contended that statement of Account dated 14.03.2022 placed at page no. 391 of the paper book indicates the payments made by the respondent allottee.

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 12.10.2021 may be modified accordingly.

11. Per contra, Ld. counsel for the respondent-allottee contended that the impugned order passed by Id. Authority is perfectly 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 the case are that respondent-allottee booked the unit bearing No. IG-05-1102, measuring 2000 sq. ft., at 11th Floor, tower no. 5, in the project being developed by the appellant-promoter, namely, "Imperial Gardens" Sector 102, Gurugram on 26.10.2012. The allotment letter of the above said unit was issued on 28.02.2013. The Buyer's Agreement was executed between the parties on 28.05.2013. As per statement of account dated 17.02.2020, the respondent had paid an amount of Rs. 1,48,82,033 against the total sale consideration 1,48,65,211. The Occupation Certificate was issued on 17.10.2019. The letter for offer of possession of the unit was issued on 24.10.2019. According to clause 14 (a) of the agreement, the appellant-promoter is to deliver the possession of the unit within 42 months from the start of construction. There is also a provisions of grace period of 3 months for applying and obtaining the completion

certificate/occupation certificate in respect of the unit/or the project. Clause 14 (a) of the agreement reads as under:-

“(a) Time of handing over the possession

Subject to the terms of this clause and barring force majeure conditions and subject to the Allottee having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this 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 42 (Forty Two) months from the date of start of construction; subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the company shall be entitled to a grace period of 3 (three) months after the expiry of said period of 42 months for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the project.”

14. As per aforesaid clause of the agreement, possession of the unit was to be delivered within 42 months from the date of start of construction. The date of start of construction has been considered as 11.11.2013, which is not in dispute. As per the above said clause, a further grace period of three months for obtaining Completion/Occupation Certificate etc. has been provided. Perusal of the Occupation Certificate dated 17.10.2019 place at page no. 383 of the paper book reveals that the appellant-promoter has applied for grant of Occupation

Certificate on 11.02.2019 which was ultimately granted on 17.10.2019, it is also well known that it takes time to obtain Occupation Certificate from the concerned authority after applying 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 obtaining the Occupation Certificate. Thus, with inclusion of grace period of 3 months as per the provisions clause 14 (a) of the agreement, the total completion period becomes 45 months. Thus, the due date of delivery of possession comes out to 11.08.2017.

15. 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-allottee after the due date of delivery of possession i.e. 11.08.2017, 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 delivery of possession i.e. 11.08.2017 shall be payable from 11.08.2017 and the payment which have been made by the respondent allottee after the due date of delivery of possession i.e. 11.08.2017 shall be payable from the date on which respective

payments have been made by the respondent-allottee to the appellant-promoter.

16. The further 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. No other point was argued before us by Ld. counsel for the parties.

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

19. The amount of Rs. 32,32,317/- 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

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

20. No order as to costs.

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

22. 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)

Rajni