

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 74 of 2022

Date of Decision: 11.10.2023

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 Sayantan Mandal son of Shri S.N. Mondal.

Appellant

Versus

Apoorv Gupta, Resident of # B-127, Suncity, Sector 54, Gurugram-122002, Haryana.

Respondent

CORAM:

Justice Rajan Gupta	Chairman
Shri Anil Kumar Gupta,	Member (Technical)

Argued by: Ms. Tanika Goyal, Advocate,
for the appellant.

Mr. Apoorv Gupta-respondent in person.

ORDER:

RAJAN GUPTA, CHAIRMAN:

The present appeal is directed against the order dated 22.07.2021 passed by the Haryana Real Estate Regulatory Authority, Gurugram (hereinafter referred to as 'the Authority'), operative part thereof reads as under:-

“H. Directions of the authority.

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47. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- 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. 08.02.2013 till 03.10.2018 i.e. expiry of 2 months from the date of offer of possession (03.08.2018). 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 also 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.3864-3889/2020 decided on 14.12.2020.

48. Complaint stands disposed of.

49. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

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Dated: 22.07.2021”

2. The complainant (respondent herein) had booked a floor in the project of the appellant/promoter namely Emerald Hills-Floors, Sector-65, Gurugram, on 15.06.2009 by paying an amount of Rs.5,00,000/-. He was allotted a unit bearing no.EHF-350-C-FF-046, 1st floor, Sector Coral in the said project vide provisional allotment letter dated 27.07.2009. A 'Buyer's Agreement' (hereinafter referred to as 'the agreement') between the parties was executed on 08.11.2010. As per clause 13(a) of the agreement, the possession of the unit was to be handed over by the appellant/promoter to the respondent/allottee within thirty months from the date of execution of the agreement (including three months grace period) i.e. by 08.05.2013. It appears that the Occupation Certificate was granted to the appellant/promoter on 30.05.2018. Thereafter, the appellant/promoter offered possession to the respondent/allottee vide letter dated 03rd August, 2018 and unit was ultimately handed over to the respondent/allottee on 31st October, 2018 and conveyance deed was executed on 28.11.2018.

3. On 12th October, 2020, however, the respondent/allottee filed complaint before the Authority seeking direction to the respondent to pay interest at the applicable rates on account of delay in offering possession i.e.

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from the date he paid the amount till the delivery of possession.

4. The appellant/promoter contested the complaint by filing written reply wherein it denied the allegations of the respondent/allottee. It was pleaded that the allottee consciously and willfully had opted for a construction linked plan for remittance of the sale consideration for the unit in question. However, the respondent/allottee has been irregular in paying the installments on time despite demand notices and reminders issued to him. It was further pleaded that the project in question was registered under the Act and the registration certificate was granted by the authority on 29.08.2017. The registration of the project was valid till 28.08.2022 and hence the date of delivery of possession was extended to 28.08.2022. It was further pleaded that the appellant/promoter had applied for Occupation Certificate on 26.02.2018 and the same was granted by the competent authority on 30.05.2018. Thus, by letter dated 03.08.2018, possession of the unit was offered to the respondent/allottee and he was called upon to remit balance sale consideration and complete the formalities. The possession of the unit was taken by the allottee on 31.10.2018.

5. The Authority after considering the pleas raised by the parties, passed the impugned order dated 22.07.2021, the

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relevant part of which has already been reproduced in the opening para of this order.

6. Aggrieved by the order passed by the Authority, the appellant promoter filed the present appeal.

7. On 09th March, 2023, when the case was taken up for hearing, learned counsel for the appellant limited its grievance for three counts. In view of the statement made by counsel for the appellant before us, the following order was passed on 09.03.2023:-

“ Learned counsel for the appellant has limited grievance with regard to (i) admissibility of grace period (ii) interest on the payments made after due date of delivery of possession i.e. 08.05.2013, should be from the respective dates of payments made (iii) interest on delayed payments made by the respondent/allottee should be charged at the same rate as has been granted to the promoter.

Learned counsel for the appellant further submits that he shall submit calculation sheet in connection with the above reliefs sought by the appellant and furnish it to the respondent within two weeks from today.

Adjourned to 26.04.2023.”

8. When the case was taken up for final hearing on 03.10.2023, learned counsel for the appellant primarily stressed on the aforesaid issues.

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9. On the other hand, the respondent has raised serious objections to grant the aforesaid reliefs to the appellant. He submitted that the order of the Authority is just and fair and is also in accordance with the Act and the rules framed thereunder. There is no merit in the appeal and the same deserves to be dismissed.

10. We have duly considered the aforesaid contentions of the parties.

11. Undisputedly, the respondent/allottee had booked a floor in the project of the appellant/promoter namely Emerald Hills-Floors, Sector-65, Gurugram, on 15.06.2009 by paying an amount of Rs.5,00,000/-. The appellant allotted a unit bearing no.EHF-350-C-FF-046, 1st floor, Sector Coral in the said project vide provisional allotment letter dated 27.07.2009. The agreement between the parties was executed on 08.11.2010. As per statement of account dated 25.06.2021, the allottee had paid an amount of Rs.82,09,812/- against the total sale consideration of Rs.80,01,854/-. The offer of possession to the allottee was issued by the appellant on 03.08.2018. The unit was handed over to the respondent/allottee on 31.10.2018 and conveyance-deed was executed on 28.11.2018. The respondent/allottee filed complaint on 12.10.2020.

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12. According to Clause 13(a) of the agreement, the unit was supposed to be handed over within 27 months from the date of agreement i.e 08.11.2010. The agreement allows a grace period of three months for obtaining the completion certificate or occupation certificate for the unit or the project. However, the Authority did not acknowledge this grace period. Learned counsel for the appellant/promoter has argued that the appellant/promoter is entitled to three months' grace period as specified in Clause 13(a) of the agreement. To resolve this dispute, let's take a closer look at the exact wording of Clause 13(a) reproduced as below:

“13.POSSESSION**(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 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 Independent Floor within 27 months from the date of execution of this Agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 3 months, for applying and obtaining the occupation certificate in respect of the Independent Floor and/or the Project,”

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13. As per this clause, possession of the unit was to be handed over by 08.02.2013, considering the 27-month period from the date of agreement. The Clause 13(a) grants a grace period of 3 months for obtaining the Occupation Certificate 'OC'. Perusal of the Occupation Certificate dated 30.05.2018, (page 326) shows that the appellant-promoter applied for the 'OC' on 26.02.2018 and received it on 30.05.2018. Obtaining such certificates takes time, a fact widely acknowledged. Section 18 of the Act states that if a project by the promoter is delayed and the allottee chooses to withdraw, he can seek a refund. Alternatively, if the allottee decides to continue with the project, the promoter must pay interest for each month of delay. In our view, if the allottee opts to continue with the project, he implicitly accepts the agreement's terms, including the 3-month grace period for obtaining the Occupation Certificate. Hence, considering these circumstances, the appellant/promoter has the right to utilize the stipulated grace period for applying and obtaining the Occupation Certificate. Consequently, with the inclusion of this 3-month grace period, the total period for handing over possession of the unit becomes 30 months. Consequently, the due date for delivery of the unit should be 08.05.2013, not 08.02.2013, as stated in the impugned order and the respondent/allottee shall be entitled for delay possession interest at the prescribed rate

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from 08.05.2013 till 03.10.2018 instead from 08.02.2013 till 03.10.2018.

14. Further argument of the appellant is that the interest at the specified rate on payments, demanded by the appellant and made by the respondent/allottee after the due date of possession i.e. 08.05.2013, should be payable from the respective dates the payments were made by the respondent/allottee to the appellant/promoter. This argument is logical. Consequently, interest at the prescribed rate on payments made by the respondent/allottee before the due date of possession of unit should start from 08.05.2013. Similarly, payments made after the due date of possession i.e. 08.05.2013 should accrue interest from the dates those payments were made by the respondent/allottee to the appellant/promoter.

15. Additionally, the appellant/promoter contends that the respondent/allottee failed to make timely payments, making him liable to pay interest on the delayed payments at the same rate applied to the respondent/allottee for delayed possession charges. This argument aligns with the definition of interest in the Act and is therefore valid. The appellant/promoter has the right to charge interest on delayed payments (if any) at the same rate as the interest awarded to the respondent/allottee for delayed possession charges.

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

17. The amount of Rs.43,15,415/-deposited by the appellant/promoter with this Tribunal in view of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016, along with interest accrued thereon, be sent to the Haryana Real Estate Regulatory Authority, Gurugram, for disbursement to the respondent/allottee as per the above said observations and the balance amount be remitted to the appellant, subject to tax liability, as per law and rules.

18. No order as to costs.

19. Copy of this order be communicated to both the parties/counsel for the parties and the learned Authority.

20. File be consigned to the record.

Announced:
October 11, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)