

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.81 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

1. Mr. Sumesh Mahendra
2. Ms. Sangeeta Mahendra

Both Residents of 65 HAUZ Khas Apartments, HAUZ
Khas, New Delhi-110016.

Respondents

CORAM:

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

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

Mr. Harshit Joon, Advocate,
for the respondents.

ORDER:

ANIL KUMAR GUPTA, MEMBER (TECHNICAL)

The present appeal has been preferred under
Section 44(2) of the Real Estate (Regulation and Development)

Appeal No.81 of 2022

Act 2016 (further called as, 'the Act') by the appellant/promoter against impugned order dated 22.07.2021 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Ld. Authority') whereby the Complaint No. 4841 of 2020 filed by the respondent-allottees 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. 26.05.2012 till 11.03.2017 i.e. expiry of 2 months from the date of offer of possession (11.01.2017). 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. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainants/allottees at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020."*

2. As per averments in the complaint, the respondent-allottees booked a unit bearing No. EHF-267-J-GF-044,

Appeal No.81 of 2022

Ground Floor, Block-Jemma, measuring 1380 sq.ft. alongwith car parking space in the project of the appellant/promoter, namely, "Emerald Hills Floors" situated at Sector-65, Gurugram, in the year 2009. The provisional allotment letter of the above said unit was issued on 29.07.2009. A 'Buyer's Agreement' (hereinafter referred to as 'the agreement') was executed between the parties on 26.02.2010. As per statement of account dated 19.02.2021, the respondent/allottees paid an amount of Rs. 64,82,427/- against the total sale consideration of Rs.65,15,468/-. As per clause 13 (i) of the agreement, the appellant/promoter was to deliver the possession of the unit within 27 months with six months grace period from the date of execution of the agreement. Thus, the proposed date of possession of the unit as per agreement is 26.05.2012. However, the possession was offered on 11.01.2017.

3. It was further pleaded that the agreement is totally one sided, which is clear from the fact that the delay in handing over the possession would attract only a meager penalty of Rs.10/- per sq. ft. on the super area of the flat, on monthly basis, whereas the penalty for failure to take possession would attract holding charges of Rs.10/- per sq. ft. and 15% penal interest per annum compounded quarterly on the unpaid amount of installment due to the promoter.

Appeal No.81 of 2022

4. The allottees requested the promoter to compensate them for the delayed period in handing over the possession as per the terms of the agreement but the promoter refused to pay the same. Therefore, the respondent/allottees filed the complaint before the Authority claiming the following reliefs:-

- a) *Direct the Respondent to pay interest @ 18% p.a. as payment, towards delay in handing over the property in question as per provisions of The Real Estate (Regulation and Development) Act, 2016 ("RERA") and Haryana Real Estate (Regulation and Development) Rules, 2017 ("HRERA");*
- b) *Direct the Respondent to pay a sum of Rs.50,000/- to the Complainants towards the cost of the litigation.*
- c) *Pass such order or further order as this Hon'ble Authority may deem fit and proper in the facts and circumstances of the present case."*

5. The complaint was resisted by the appellant/promoter on the grounds of the jurisdiction of the learned Authority and on some other technical grounds. It was pleaded that the provisions of the Act are not retrospective in nature and the same cannot undo or modify the terms of the agreement which was executed prior to coming into force of

Appeal No.81 of 2022

the Act. It was further stated that merely because the Act applies to 'ongoing projects' which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the respondent/allottees for seeking interest cannot be called into aid in derogation and in negation of the provisions of the buyer's agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement.

6. It was further pleaded that the provisions of the Act are not applicable to the project in question. The Occupation Certificate in respect of the part of the project in which the unit in question is situated, had been sanctioned on 09.06.2016 i.e. before the notification of the rules. Furthermore, the possession of the unit had been delivered to the allottees on 17.06.2017. Thus, part of the project in question is not an 'ongoing project' under rule 2(1)(o) of the rules. The allottees consciously and willfully opted for a Construction Linked Plan for remittance of the sale consideration for the unit in question. Since, the allottees were not forthcoming with the payment of instalments, the promoter constrained to issue final notice dated 30.09.2013 to the allottees. Upon receipt of the final notice, the

Appeal No.81 of 2022

respondent/allottees approached the appellant/promoter not to give effect to the said notice and further promised the appellant that they would remit the remaining instalments on time. However, the respondents/allottees did not amend their ways and defaulted in remittance of the instalments on time. So, the reliefs sought by the respondents/allottees are impermissible both in law and on facts.

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

8. 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.

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

10. It was contended by learned counsel for the appellant that as per clause 13(i) of the Buyer's Agreement, the delivery of possession of the unit is to be given within 27 months plus grace period of 6 months from the date of execution of the agreement subject to timely payment of the instalments and compliance by the respondents/allottees of all the terms and conditions of the said agreement. Grace period

Appeal No.81 of 2022

cannot be denied merely on account of delay caused in completion of the project. Further grace period of 6 months is for applying and obtaining the occupation certificate in respect of the 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 caused 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. The agreement was executed on 26.02.2010. The possession of the unit was to be given within 27 months plus six months grace period i.e. 26.11.2012. She submitted that Occupation Certificate was issued on 09.06.2016 and letter of offer of possession has been issued on 11.01.2017 and the respondent/allottees have taken over the possession on 17.06.2017.

11. She stated that the interest for delay in delivery of possession to the respondent/allottees for the payment made

Appeal No.81 of 2022

by them prior to due date of possession i.e. 26.11.2012 should be calculated from due date of possession i.e. 26.11.2012 and the interest on payments made by them after 26.11.2012 should be calculated from the date of respective payments.

12. It was also submitted that the respondent/allottees had been defaulter and had failed to make payments on time. The respondent/allottees shall also be liable to pay interest on the payments which have been delayed by them on the same rate of interest as being granted to the respondent/allottees in case of delayed possession charges.

13. With these contentions, it was contended by the learned counsel of the appellant that the present appeal may be allowed and the impugned order dated 22.07.2021 may be modified accordingly.

14. Per contra, learned counsel for the respondent/allottees contended that the impugned order passed by the learned Authority is just and fair and is as per the Act and rules. There is no merit in the appeal and the same deserves to be dismissed.

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

16. The undisputed facts of the case are that respondent-allottees booked the unit bearing No. EHF-267-J-

Appeal No.81 of 2022

GF-044, Ground Floor, Block-Jemma, measuring 1380 sq.ft. alongwith car parking space in the project of the appellant/promoter, namely, "Emerald Hills Floors" situated at Sector-65, Gurugram, in the year 2009. The provisional allotment letter of the above said unit was issued on 29.07.2009. The agreement was executed between the parties on 26.02.2010. As per statement of account dated 19.02.2021, the respondent/allottees paid an amount of Rs. 64,82,427/- against the total consideration of Rs.65,15,468/- to the appellant/promoter. The Occupation Certificate in respect of the part of the project was issued on 09.06.2016. The letter for offer of possession of the unit was issued on 11.01.2017. The possession of the unit in question has been handed over to the respondent-allottees on 17.06.2017.

17. According to Clause 13(i) of the agreement, the unit was supposed to be handed over within 27 months from the date of agreement i.e 26.02.2010. The agreement allows a grace period of six 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 six months' grace period as specified in Clause 13(i) of the agreement. To resolve this

Appeal No.81 of 2022

dispute, let's take a closer look at the exact wording of Clause 13(i) reproduced as below:

“13. POSSESSION**(i) 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 six months, for applying and obtaining the occupation certificate in respect of the Independent Floor and/or the Project,”

18. As per this clause, possession of the unit was to be handed over by 26.05.2012, considering the 27-month period from the date of agreement. The Clause 13(i) grants a grace period of 6 months for obtaining the Occupation Certificate 'OC'. Obtaining such certificates takes time, a fact widely acknowledged. Section 18 of the Act states that if a project by

Appeal No.81 of 2022

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 6-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 6-month grace period, the total period for handing over possession of the unit becomes 33 months. Consequently, the due date for delivery of the unit should be 26.11.2012, not 26.5.2012, as stated in the impugned order and the respondent/allottees shall be entitled for delay possession interest at the prescribed rate from 26.11.2012 till 11.03.2017 instead from 26.05.2012 till 11.03.2017.

19. Further argument of the appellant is that the interest at the specified rate on payments, demanded by the appellant and made by the respondent/allottees after the due date of possession i.e. 26.11.2012, should be payable from the respective dates the payments were made by the respondent/allottees to the appellant/promoter. This

Appeal No.81 of 2022

argument is logical. Consequently, interest at the prescribed rate on payments made by the respondent/allottees before the due date of possession of unit should start from 26.11.2012. Similarly, payments made after the due date of possession i.e. 26.11.2012 should accrue interest from the dates those payments were made by the respondent/allottees to the appellant/promoter.

20. Additionally, the appellant/promoter contends that the respondent/allottees failed to make timely payments, making them liable to pay interest on the delayed payments at the same rate applied to the respondent/allottees 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/allottees for delayed possession charges.

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

22. The amount of Rs.28,90,452/-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

Appeal No.81 of 2022

Haryana Real Estate Regulatory Authority, Gurugram, for disbursement to the respondent/allottees as per the above said observations and the balance amount be remitted to the appellant, subject to tax liability, as per law and rules.

23. No order as to costs.

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

25. File be consigned to the record.

Announced:
October 11, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)

cl