

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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**Appeal No.146 of 2022  
Date of Decision: 13.09.2023**

M/s M3M India Pvt. Ltd., registered office at unit no.  
SB/C/5L/Office/008, M3M Urbana, Gurugram.

Appellant

Versus

1. Rita Srivastava
2. Dileep Srivastava

Both resident of Jalan Mulawaraman No. 6, Keybayoran Baru,  
Jakarta, Indonesia-12110.

Respondents

**CORAM:**

Justice Rajan Gupta  
Shri Anil Kumar Gupta,

Chairman  
Member (Technical)

**Present:** Mr. Aman Arora, Advocate,  
for the appellant.

Mr. Akhil Ahuja, Advocate  
for the respondent.

**ORDER:**

**RAJAN GUPTA, CHAIRMAN (Oral):**

The present appeal is directed against the order  
dated 25.08.2021 passed by the Haryana Real Estate  
Regulatory Authority, Gurugram (for short, the Authority).

Operative part thereof reads as under:

*“i. The respondents are 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. 11.11.2016 till 11.09.2020 i.e.  
expiry of 2 months from the date of offer of  
possession (11.07.2020). 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 complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.*
- iii. The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e. 9.30% by the respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e. the delayed possession charges as per section 2(za) of the Act.*
- iv. The respondents 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 builder buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos.3862-3889/2020 decided on 14.12.2020."*

2. While posing the challenge to aforesaid order, the appellant promoter deposited an amount of Rs. 31,81,937/- as per-deposit in view of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (for short, the Act).

3. Learned counsel for the appellant has addressed arguments at some length and assailed the order. According to him, appellant promoter is not liable to pay interest from

01.11.2017 till 11.05.2020 being zero period in view of office order dated 03.03.2021 (Annexure A-8) hereto.

4. This contention is disputed by the learned counsel for the respondent. He submits that the said office order was for a limited purpose for waiving of the licence renewal fee and penalty thereon.

5. We find that similar finding has been recorded by the authority in the instant case. Learned counsel for the appellant has not been able to point out any serious legal infirmity in the said finding. We, thus, uphold the finding of the Authority in this respect.

6. Admittedly, possession was given to allottee on August, 2023 during the pendency of this appeal when possibility of amicable settlement was being explored and conveyance deed was also executed.

7. Needless to observe that rest of the issues including recovery of pending dues, if any, can be settled between the parties as per law at the appropriate stage.

8. The question, however, arises as regards the remission of the pre-deposit made before this Tribunal at the time of filing of appeal in view of proviso to Section 43(5) of the Act.

9. Some delay on part of the promoter in handing over the possession was bound to occur for the reasons beyond its control. We have put a query to the parties whether interests of justice and equity would be served if lump sum amount is remitted to the allottees in lieu of delay possession charges.

Allottees are agreeable to this. Under these circumstances, we direct that an amount of Rs.23,00,000/- be remitted to the respondent and rest of the amount be sent to the Authority for disbursement to the appellant out of the total amount of Rs. 31,81,937/- deposited by the appellant-promoter in view of proviso to Section 43(5) of the Act.

10. With these observations, we dispose of the instant appeal. As the order has been passed primarily on the basis of statement (Mark-‘A’) of the allottees that they are ready to accept the amount of Rs.23,00,000/- as lump sum, in lieu of delay possession charges, we make it clear that the same shall not be treated as precedent.

11. The amount of Rs. 31,81,937/- deposited by the appellant-promoter in view of proviso to Section 43(5) of the Act., along with interest accrued thereon, be sent to the Ld. Authority. It is made clear that the out of amount of Rs. 31,81,937/-, an amount of Rs. 23,00,000/- shall be disbursed to the respondent-allottee and rest of the amount shall be disbursed to the appellant-promoter subject to tax liability, if any, as per law and rules.

12. Copy of this order be sent to learned counsel for the parties/parties as well as the Authority, Gurugram.

13. File be consigned to the record.

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta  
Member (Technical)