

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 429 of 2021
Date of Decision: 15.02.2024

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.

Appellant

Versus

Shivram Consultant Pvt. Ltd. registered office at W-79, ground floor, middle portion, Greater Kailash, Part-2, New Delhi-110048.

Respondent

CORAM:

**Justice Rajan Gupta
Anil Kumar Gupta**

**Chairman
Member (Technical)**

Present:

Ms. Tanika Goyal Advocate,
for the appellant.

Ms. Deepali Verma, Advocate,
for the respondent.

ORDER:

Rajan Gupta, Chairman (Oral)

Challenge in the present appeal is to the order dated 03.03.2021 passed by the Haryana Real Estate Regulatory Authority at Gurugram ('the Authority below', in short) wherein interest at the rate of 9.30% p.a. for every month of delay on the amount paid by the complainant (respondent herein) from due date of possession i.e. 27.10.2014 till 15.05.2019 has been awarded with further directions

that arrears of interest would be paid to the complainant within 90 days from the date of order. It has been taken note thereof that an amount of Rs.15,17,642/- towards Delay Possession Charges (DPC) has already been credited in the account of the respondent-allottee.

2. Notice was issued in this matter, after compliance of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016.

3. It appears that during the course of arguments, certain efforts were made by the parties to settle the matter amicably.

4. Today, when the case was taken up for hearing, this Tribunal has been apprised by Ms. Goyal that amicable settlement has been arrived at between the parties. She has produced a copy of the Settlement Agreement and prays that same may be taken on record. Prayer is accepted. Settlement Agreement is taken on record as Mark-'A'. Relevant part thereof is reproduced hereunder for ready reference:

"1. That it has been agreed to between the parties that subject to the parties duly adhering to the terms and conditions of this Agreement in a time bound manner, the Second Party has agreed to give the following benefits to the First Party towards full and final settlement of all the Disputes, grievances, claims, demands, etc. of the First Party and/or anyone claiming through or under the First Party in relation to the Said Unit, the Said Project, the Second Party and/or otherwise regarding and interest of the First Party with regard to the subject matter of this Agreement and the following arrangement and understanding have been arrived at:

a) That the Second Party has agreed to pay a lump sum amount of Rs.1,50,34,735/- (Rupees One Crore Fifty Lakhs Thirty-Four Thousand Seven hundred and Thirty-Five Only) (hereinafter referred to as "Compensation Amount") towards full and final settlement of all grievances, disputes, claims, contentions & concerns of the First Party in respect of the Said Unit and the Said Project. Further, the Second Party has already credited the delay compensation of Rs.15,17,642/- (Rupees Fifteen Lakhs Seventeen Thousand Six Hundred and Forty-Two Only) at the time of issuance of Intimation of Possession (IOP). The First Party will be paid a sum of Rs.95,31,181/- (Ninety-Five Lacs Thirty-One Thousand One Hundred and Eighty-One Only) towards remaining Compensation Amount after adjustment of the principal outstanding i.e. Rs. 23,22,156/- and CAM/CAE outstanding Rs.16,63,581/-. The remaining Compensation Amount Rs. 95,31,181/- will be paid to the First Party by way of Demand Draft/Cheque bearing no. 340745 drawn on HSBC Bank at the time of execution of this Settlement Agreement. And the First Party will pay the CAM/CAE charges till date by way of RTGS.

b) The Second Party has also agreed to provide the following waivers to the First Party:

(i) 100% waiver on Holding Charges (HC) till actual handover of the said unit.

(ii) 100% waiver on Delay Payment Charges (DPC) till actual handover of the Said Unit.

(iii) 100% waiver of Late Payment Fee (LPF) on Common Area Maintenance Charges (CAM) till execution of this Agreement.

(iv) 100% waiver of Late Payment Fee on Common Area Electricity Charges (CAE) till execution of this Agreement.

(v) The Second Party shall provide a benefit of 100% waiver on the first transfer/transfer charges to the First Party for the Said Unit for a period of 90 (Ninety) days from

the date of execution of this Settlement Agreement. The First Party unconditionally agrees and understands that upon expiration of 90 (Ninety) days from the date of execution of this Agreement, if First Party fails to transfer the Said Unit then, the First Party shall take the physical possession of the Said Unit within a period of 30 (thirty) days therefrom without any protest or demur.

It is mutually agreed that the abovementioned benefits, concessions, advantages, etc. being given to/provided to/extended to/made available to the First Party are in full and final settlement of all grievances, claims, disputes, complaints raised by the First Party and the First Party acknowledges that the First Party is now not left with any further claims, demands, benefits, compensation, etc. of any nature and extent whatsoever regarding in relation to the Said Unit, the Said Project, the Second Party and/or otherwise regarding and interest of the First Party with regard to the subject matter of this Agreement and henceforth the First Party shall not raise any other claim, demands, benefits, compensation, etc. of any nature whatsoever and extent before any forum legal or otherwise.”

5. In view of above, learned counsel for the appellant prays that she may be allowed to withdraw the present appeal and the amount deposited at the time of filing of this appeal with this Tribunal by the appellant-promoter may be refunded to it along with interest accrued thereon.

6. As per Para No.4 of the Settlement Agreement, it appears that the respondent-allottee has also agreed to refund of the pre-deposit amount to the appellant-promoter. Settlement Agreement is signed by both the parties and two witnesses.

7. Ms. Deepali Verma, Advocate counsel representing the respondent submits that she has no objection to the aforesaid prayer.

8. In view of above, the appeal is hereby dismissed as withdrawn.

9. As the matter has been decided on the basis of settlement arrived at between the parties, the amount of Rs.3,70,04,735/- deposited by the appellant-promoter with this Tribunal as pre-deposit in terms of proviso to Section 43(5) of the Act, along with interest accrued thereon, be remitted to the learned Authority for disbursement to the appellant-promoter, subject to tax liability, if any, according to law.

10. The Authority, however, shall be at liberty to call upon the respondent-allotee for NOC, if any, required before releasing the amount in question.

11. Copy of this order be forwarded to the parties, their counsel and the learned Authority.

12. Files be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)

15.02.2024

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