

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.499 of 2021

Date of Decision: November 08,2024

Emaar India Ltd. (formerly known as Emaar MGF Land Limited),
306-308, Third 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 Authorized Representative Mr. Subrat Kumar
Pradhan, age 45 years, son of Late Sh. Sarat Kumar Pardhan

Appellant.

Versus

Prashant Bajaj, R/o 63/41, West Punjabi Bagh, New Delhi,
110026

Respondent

Present : Mr.Kunal Dawar, Advocate along with
Ms. Tanika Goyal, Advocate for the appellant.
Mr. Aquib Ali, Advocate along with Mr. Azhar Ayaz,
Advocate for the respondent.

CORAM:

**Justice Rajan Gupta
Rakesh Manocha**

**Chairman
Member (Technical)**

ORDER

RAJAN GUPTA, CHAIRMAN

1. The present appeal is directed against the Order dated 27.01.2021 passed by Authority¹, vide which the appellant-promoter was directed to pay interest @ 9.30% p.a. for every month of delay on the amount paid by the respondent-allottee from the due date of possession i.e. 31.01.2012 till handing over of possession. The operative part of the order reads as under:

“18. Hence, The Authority hereby pass the following order and issue directions under section 34(f) of the Act:

(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. 31.01.2012 till the handing over of possession The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.

(ii) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

(iii) The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.

(iv) Interest on the due payments from the complainant shall be charged at the prescribed rate @ 9.30 % by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.”

2. The respondent-allottee applied and was allotted three commercial units on 12th floor in Digital Greens, Village Ghata, Sector 61, Gurugram by paying advance amount of Rs.76,50,000/- on 19.3.2007. The possession

¹ Haryana Real Estate Regulatory Authority, Gurugram

was to be handed over to the allottee within three years from the date of allotment i.e. on or before 19.3.2010. No BBA² was executed. By sending legal notice dated 14.04.2009, the allottee sought refund of the entire amount paid by him. On receiving the notice, the promoter agreed to enter into BBA and promised the allottee that the promoter shall pay the additional licence fee. The promoter also offered the allottee to surrender the units and in place thereof offered to allot fresh commercial unit on 2nd floor of the project. The amount of Rs.76,50,000/- which was earlier paid by the allottee was also offered to be adjusted. The promoter also agreed to reduce the price rate of new commercial unit. Finding the assurance of the promoter lucrative, the allottee agreed to take the said unit. BBA was executed on 31.12.2009. The aforesaid unit was agreed to be sold for a total sum of Rs.1,20,05,753/-, out of which the allottee paid Rs.1,01,32,276/-. In terms of the BBA, the promoter promised to offer possession within 21 months plus 120 days grace period from the date of execution of BBA i.e. on or before 31.01.2012. However, the project was not completed within the stipulated period. The complainant got offer of possession from the promoter after five years i.e., July, 2017. Being aggrieved, the allottee filed the complaint before Authority claiming DPC³.

3. The Authority, vide impugned order, allowed the complaint. Feeling dissatisfied, the promoter is in appeal before this Tribunal.

4. During the pendency of appeal, with the intervention of the Tribunal, the possession of the unit was handed over to the respondent-

² Builder Buyer Agreement

³ Delayed Possession Charges

allottee on 16.03.2023. The appellant-promoter also offered to pay Rs.61,00,000/- to the allottee as full and final settlement of his claims which was not acceptable to the allottee.

5. The question survives for consideration in this appeal is with regard to the date from which DPC are payable by the promoter.

6. The case set up by the appellant-promoter was that the interest awarded to the allottee should be upto 07.06.2017 plus two months i.e. 07.08.2017. The promoter got occupation certificate on 20.03.2017 and offered possession to the allottee on 07.06.2017 after receiving occupation certificate. Thus, delay possession interest should be taken from due date of possession 31.01.2012 till offer of possession 7.6.2017 plus two months i.e., 07.08.2017 instead of date of handing over of possession.

7. During the pendency of the appeal, possession was handed over to the respondent pursuant to an order passed by predecessor Bench on 18.01.2023. Vide order dated 02.05.2023, the Bench asked the promoter whether Conveyance Deed could be executed in favour of the allottee, who stated that possibility could be explored on payment of requisite charges. Consequently, on 20.07.2023, following order was passed by the Bench:

“Learned counsel for the appellant submits that two communications were sent to the respondent-allottee calling upon him to attend the office of the appellant for the purpose of execution of the conveyance deed but to no avail. He submits that in case, respondent-allottee appears before a Senior Official of the appellant-company on 01.08.2023 at 11.00 A.M. sharp, it shall be ensured that conveyance deed is executed in

his favour subject to the outcome of the appeal. Respondent-allottee is agreeable to this proposal.

This Tribunal shall be apprised of further progress on the next date of hearing.

To come up on 26.9.2023.

Needless to observe, we expect that the appellant-promoter shall send a communication to the respondent-allottee in terms of the aforesaid undertaking.”

8. As possibility of amicable settlement was being explored, the promoter also made an offer of lump-sum amount of Rs.61,00,000/- as full and final settlement of claims of the allottee except CAM charges, as recorded in the order dated 03.07.2024. However, on the next date of hearing, i.e., 30.07.2024, the allottee spurned the offer of Rs.61,00,000/- despite having taken possession due to intervention of the Bench and asked for hearing of the case on merits. We, thus, heard the appellant on the question of grant of DPC.

9. The issue is being dealt herewith.

10. At the out-set, it is necessary to refer to Clause 3 of the BBA, according to which due date of handing over of possession was 21 months from the date of execution of agreement plus grace period of 120 days. The date would come out to be 31.01.2012. It is, however, on record that Occupation Certificate was granted to the appellant only on 20.03.2017. Immediately thereafter, i.e., on 07.06.2017 offer of possession was made.

11. On perusal of record, we do not find any force in the contention of counsel for the appellant that the said offer was not a valid offer of

possession. On the other hand, stand of the promoter is that the allottee never came forward to take possession despite communication(s) sent to him. A perusal of order dated 18.1.2023 would show that an amount of Rs.24,48,629/- was pending towards the allottee which he submitted through RTGS on 28.11.2022. Thus, there is no doubt that the appellant dilly dallied the matter on one pretext or the other, perhaps with the impression that he will be able to claim considerable amount as DPC (Delay Possession Charges).

12. We, thus, feel that offer of possession by the promoter on 07.06.2017 was a valid offer and the allottee could have taken possession on expiry of two months of the offer by paying the balance amount. Thus, we hold that the allottee would be entitled to DPC from the due date of possession as given in agreement i.e., 31.01.2012 till 07.08.2017 (i.e. date of offer of possession, meaning 07.06.2017 plus two months).

13. The appeal is allowed in the manner indicated above. No order as to costs.

14. The amount of Rs.91,41,617/- deposited by the promoter with this Tribunal as pre-deposit in view of proviso to Section 43(5) of the Act, along with interest accrued thereon, be remitted to the Authority for disbursement to the promoter, subject to tax liability, if any, according to law.

14. Copy of the order be communicated to both the parties/counsel for the parties and the Authority.

15. File be consigned to record room.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

November 08, 2024
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