

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.152 of 2022

Date of Decision: 10.12.2024

Pawan Dutta resident of D-5/9, DLF Phase-I, Gurugram Haryana

Appellant-allottee.

Versus

Emaar MGF Land Ltd, registered office at Mehrauli Gurugram Road,
Sikanderpur Chowk, Gurugram-122002,

Respondent-promoter.

CORAM:

**Justice Rajan Gupta
Shri Rakesh Manocha**

**Chairman
Member (Technical)**

Present: Mr. Drupad Sangwan, Advocate,
for the appellant

Ms. Tanika Goyal, Advocate along with
Ms. Ankita Chaudhary, Advocate,
for the respondent.

ORDER:

RAJAN GUPTA, CHAIRMAN (ORAL):

Present appeal is directed against order dated 12.10.2021 passed by the Authority at Gurugram¹. The BBA² was executed between the parties on 19.01.2010. The complainant is stated to have remitted an amount of Rs.27,89,527/- to the respondent-promoter against total sale consideration of Rs.79,57,000/-. The respondent-promoter cancelled the unit in question allotted to the appellant-allottee vide letter dated 28.12.2013 due to non-payment of the balance amount and admittedly forfeited the amount of Rs.14,09,830/-. The appellant-allottee instituted a complaint on 23.11.2020 claiming possession and delay possession charges.

¹ Haryana Real Estate Regulatory Authority, Gurugram

² Builder Buyer's Agreement

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2. The complaint was, however, dismissed by the Authority observing that same was unduly delayed. Reliance was also placed on judgment reported as *B.L. Sreedhar and others v. V.K.M. Munireddy and others* [AIR 2003 SC 578].

3. Learned counsel for the appellant submits that in fact the possession was never handed over him. It was primarily for grant of possession and delay possession that he instituted the instant complaint. As per him, the respondent received OC³ from the office of DTCP on 11.11.2020 and he instituted the instant complaint immediately thereafter i.e. on 23.11.2020. As per him, the ratio of the judgment in BL Sreedhar (*supra*) is, thus, not applicable to the facts of the instant case.

4. Ms. Goyal states that the question whether ratio of judgment of BL Sreedhar (*supra*) would be applicable and needs deliberation.

5. Keeping in view the entire factual matrix of the case and the fact that;

- i. the allottee has not been handed over possession till date;
- ii. the order under challenge is cryptic;
- iii. admittedly OC received by the promoter on 11.11.2020 and complaint was instituted on 23.11.2020;
- iv. the amount of Rs.14,09,830/- have been forfeited out of total amount (Rs.27,89,527/-) remitted by the allottee;

we are of the considered view that the order under challenge needs to be set aside and the matter needs to be remitted the same Authority for decision afresh after affording the opportunity to both the parties. Ordered accordingly.

6. Appeal is allowed in these terms.

³ Occupation Certificate

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7. Parties are directed to appear before the Authority on 07.01.2025.
8. Needless to observe that in view of the delay already occasioned, the Authority would endeavour to decide the matter as expeditiously as possible.
9. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

10.12.2024
Manoj Rana