

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 273 of 2021

Date of Decision: 22.01.2025

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 Mr. Subrat Kumar Pradhan, age 45 years son of Late Sh. Sarat Kumar Parshan

Appellant.

Versus

1. Mr. Vaibhav Sharma

2. Ms. Jasreen Singh

Both residents of Flat No. 1701, Engineers Apartment, Sector 18A, Plot No.11, Dwarka, New Delhi

Respondents

Present : Ms. Tanika Goyal, Advocate for the appellant.
Mr. Neeraj Goel, Advocate for the respondents.

CORAM:

Justice Rajan Gupta
Rakesh Manocha

Chairman
Member (Technical)
(Joined through VC)

ORDER:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 14.12.2020, passed by the Authority¹, operative part whereof reads as under:

“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

¹ Haryana Real Estate Regulatory Authority, Gurugram

complainants from due date of possession i.e. 28.04.2013 till the handing over of possession.

ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter monthly payment of interest till the handing over of possession shall be paid before 10th of each subsequent month.

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

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

19. Complaint stands disposed of.

20. File be consigned to registry.”

2. Promoter-Emaar MGF Land Limited has posed a challenge to the order on the ground that DPC² could have been granted only from due date of possession till a valid offer of possession was made to the allottees.

3. A project in the name and style of Emerald Estate was floated by appellant in Sector 65, Gurugram. Allottees applied for a residential unit in the same. Being successful, they were allotted a unit measuring 1650 square feet total consideration being Rs.73,73,360/-. Buyer's agreement was executed on 28.01.2010. Allottees remitted an amount of Rs.70,04,683/- towards payment of the unit. Due date of delivery of the same was 28.04.2013. As possession was not

² Delayed Possession Charges

delivered, allottees filed instant complaint before the Authority in August, 2019.

4. It appears that the project was granted Occupation Certificate on 05.03.2019. Appellant-promoter thereafter made an offer of possession to the allottees on 25.01.2020, as would be clear from perusal of letter dated 26.01.2020 (Enclosure-K).

5. Stand of the appellant is that the respondents never came forward to take possession pursuant to said letter. The respondents, however, refute this contention and state that this letter was never brought to the notice of the Authority before which the complaint was filed.

6. As stated above, the Authority directed that the allottees would be entitled to interest @ 9.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 28.04.2013 till handing over of possession.

7. Appellant challenged the order before this Bench. During pendency of proceedings, parties expressed their willingness to explore the possibility of amicable settlement. The promoter itself came forward to offer possession to the allottees and moved an application for this purpose. The predecessor Bench considered the application and passed an order dated 15.12.2022, which is reproduced hereunder:

“Today, an application under Section 151 CPC has been preferred by the appellant for issuance of the direction to the respondent to take over the possession of the allotted unit. In the said application, it has been also mentioned that the amount outstanding towards

the complainant/respondent shall be adjusted subject to final outcome of the appeal.

Ld. Counsel for the respondent is ready to take the simple possession of the unit. However, the respondent should not be asked to sign any NOC at the time of handing over of the possession of the same.

Ld. Counsel for the appellant has stated that the appellant-company would handover the possession of the unit to the respondent on 10.01.2023, without asking for any NOC and the appellant-company would give at least a weeks prior intimation to the respondent in this regard. However, it is again made clear that the liability of the parties regarding the amount would be subject to final outcome of the appeal on merit.

Now the case stands adjourned to 27.01.2023 for further proceedings/arguments.”

8. Admittedly, pursuant to above, possession was actually handed over on 11.01.2023. Efforts to settle the matter, however, continued. On 03.05.2024, the promoter made an offer that it would be ready to remit an amount of Rs.29,00,000/- to the respondents in lieu of full and final settlement of all their claims. Mr. Goel, learned counsel for the respondents, however, sought time for seeking instructions in this regard.

9. Today, when the case has been taken up for hearing, Mr. Goel has sought instructions from authorised representative of the respondents-Mr. Manish Sharma, who is present in Court. He submits that offer of lump sum amount of Rs.29,00,000/- is not acceptable to the respondents.

10. The question that remains to be decided is as to the period for which the allottees are entitled to delay compensation. A perusal of the record available shows that project-Emerald Estate was actually granted Occupation Certificate by the concerned Department on 05.03.2019. Thereafter, offer of possession dated 26.01.2020 (Enclosure-K) was made to the allottees. As per Mr. Goel, the calculation annexed with the letter of offer of possession is not as per the Act³. However, this Bench is not convinced with this plea. Had the allottees acted promptly, they could have taken possession immediately and protracted litigation could have been avoided. On the other hand, it was due to indulgence shown by predecessor Bench of the Tribunal that possession was granted to the allottees. Even thereafter, effort was made to settle the matter by paying lump sum amount to the allottees with a promise by the promoter to execute the conveyance deed immediately thereafter. Having gone half way through efforts to settle the matter amicably, it appears that greed got better of the allottees and they demanded higher amount in lieu of delay compensation despite the fact that price of the unit had also escalated.

11. Under these circumstances, this Bench feels that there would be no justification in granting delay compensation to the allottees beyond the period when valid offer of possession was made to them. It is evident that the allottees never thought it fit to pose any challenge to the offer of possession dated 26.01.2020.

³ Haryana Real Estate (Regulation and Development) Act, 2016

12. The appeal is allowed in the aforesaid terms. Allottees would be entitled to delay possession charges from due date of possession i.e. 28.04.2013 till 26.01.2020 when valid offer of possession was made to them plus two months.

13. The amount of pre-deposit made alongwith the appeal with interest accrued thereon be remitted to the Authority which shall retain the same till culmination of execution proceedings. The same shall be disbursed as per entitlement of the respective parties.

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

15. File be consigned to the record.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(Joined through VC)

January 22, 2025
mk