

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.81 of 2023

Date of Decision: July 15,2025

Sanjay Mathur, Oriental Tower, Apartment No. 7C, 251,
Ekkamai Soi, Bangkok-10110

Appellant.

Versus

Emaar MGF Ltd., 306-308, 3rd Floor, Square One, C-2,
District Centre, Saket, New Delhi

Respondent

CORAM:

Justice Rajan Gupta
Rakesh Manocha

Chairman
Member(Technical)

Present: Mr. Munish Kumar Garg, Advocate for the
appellant.
Ms. Tanika Goyal, Advocate for the respondent.

RAJAN GUPTA, CHAIRMAN

The present appeal is directed against the order dated
10.11.2022 passed by the Authority¹. The operative part of the
order reads as under:

- “i. The respondent is directed to refund the balance
amount after deducting the earnest money which shall
not exceed the 10% of the basic sale price of the said
unit and shall return the balance amount to the
complainant. The refund should have been made on the
date of surrender i.e. 30.03.2021. Accordingly, the
interest at the prescribed rate i.e. 10.25% is allowed on
the balance amount from the date of surrender to date
of actual refund.*
- ii. A period of 90 days is given to the respondents to
comply with the directions given in this order and failing
which legal consequences would follow.”*

2. Learned counsel for the appellant-allottee contends
that the allottee having withdrawn from the project, interest from

¹ Haryana Real Estate Regulatory Authority, Gurugram

respective dates of payment should have been granted, however, the Authority has granted interest from the date of surrender i.e. 30.03.2021.

3. Learned counsel for the respondent-promoter states that after completion of project, the promoter got Occupation Certificate on 20.03.2017. On the basis of same, it offered possession to the allottee vide communication dated 09.06.2017. The allottee decided to surrender the unit thereafter on 30.03.2021, thus, no liability can be fastened on the promoter prior to the date of surrender (i.e. 30.03.2021) for grant of interest.

4. Heard learned counsel for the parties and given careful thought to the facts of the case. It is evident that the allottee applied for a unit in the project- Digital Greens, Sector 61, Gurugram, licence for which was granted on 20.03.2008 to be valid till 19.03.2018. It appears that the promoter carried out construction promptly. Consequently, Occupation Certificate was granted on 20.03.2017. Total consideration of the unit was Rs.1,09,69,139/-. Out of this, the allottee has remitted an amount of Rs.34,35,961/-. Subsequently, offer of possession was given to him on 09.06.2017. It is thereafter that the allottee issued a legal notice to the promoter expressing his wish to surrender the unit in question. The same is dated 30.03.2021.

5. In the facts and circumstances of the case, the Authority came to the conclusion that the promoter had completed the project and got Occupation Certificate on 20.03.2017 and on the basis thereof, it offered possession on 09.06.2017. Thus, no fault could be found on the part of the promoter beyond the date of offer of possession to the allottee. At the same time, it is well-settled that the allottee cannot be forced to take possession of the unit in question. As the allottee decided to surrender the unit vide notice dated 30.03.2021, the promoter ought to have refunded the

amount forthwith. However, at that stage, the promoter did not act promptly due to which the allottee was constrained to file the instant complaint before the Authority.

6. In view of the fact that the promoter was granted Occupation Certificate on 20.03.2017 and made offer of possession on 09.06.2017, it appears to have acted promptly. The allottee decided to withdraw from the project and surrendered the unit vide notice dated 30.03.2021. Thus, after examining the entire issue, the Authority directed refund of the paid-up amount after deducting 10% of the sale consideration.

7. We find no infirmity with the order. Interest was also awarded @10.25% from the date of surrender till realisation. We deem it fit to keep the same intact. The amount due, if not already remitted, be paid to the allottee within 90 days of this order, failing which it will carry further interest at the same rate i.e. 10.25% from the date of order passed by the Authority till realisation. In case of failure of the promoter to remit the amount within 90 days from uploading of this order, penal provisions of Section 64 of the Real Estate (Regulation and Development) Act, 2016 will also come into play and the promoter shall be liable to pay Rs.5,000/- per day as penalty till realisation.

8. The appeal stands disposed of.

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

10. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

July 15, 2025
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