

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.347 of 2021

Date of Decision: 21.07.2025

Emaar India Limited (Formerly known as Emaar MGF Land Limited), 306-308, 3rd Floor, Square One, C-2, District Centre, Saket, New Delhi-110 017, also at Emaar Business Park, MG Road, Sikanderpur Chowk, Sector 28, Gurugram – 122 002, Haryana

Appellant

Versus

1. Rajeshwar Arora,

2. Deepak Arora,

Both residents of 153, Kadambari Apartments, Sector 9, Plot No. 19, Rohini, New Delhi, (Presently residing at A2/603, Printers Apartments, Plot No. 18, Rohini, Sector 13, Near Bhagwati Hospital, Delhi)

Respondents

CORAM:

**Justice Rajan Gupta
Shri Rakesh Manocha**

**Chairman
Member (Technical)**

Argued by: Ms. Ankita Chaudhary, Advocate,
for the appellant

Mr. Tushar Bahmani, Advocate
for the respondents

ORDER:

RAJAN GUPTA, CHAIRMAN :

Present appeal is directed against order dated 26.03.2021 passed by the Authority¹, operative part whereof reads as under:

“ 18. Hence, the Authority hereby pass the following order and issue directions under section 37 read with 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

¹Haryana Real Estate Regulatory Authority, Gurugram

of delay on the amount paid by the complainants from due date of possession i.e. 25.02.2014 till the handing over of possession. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order.

- ii. However, the respondent has already paid a sum of Rs.7,53,325/- towards delay in handing over possession at the time of offer of possession, therefore, the said amount shall be adjusted towards the amount to be paid by the respondent/promoter as delay possession charges under proviso to section 18(1) read with rule 15 of the Rules.*
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.*
- iv. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.*
- v. Interest on the delay payments from the complainants shall be charged at the prescribed rate i.e. @ 9.30% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.*

2. Respondents-allottees booked an apartment in the project floated by the appellant-promoter, namely, 'Palm Hills' in Sector 77, Gurugram. BBA² was executed between the parties on 10.02.2011. The total sale consideration of the apartment was Rs.69,99,409.3. As per BBA, appellant-promoter was required to hand over actual physical possession of the said apartment on or before 25.02.2014, but it failed to do so. The complainants approached the Authority claiming DPC³ on the entire amount of sale consideration deposited along with interest @ 24% from due date of possession till

² Builder Buyer Agreement

³ Delayed Possession Charges

actual handing over of physical possession of the unit in question.

3. The complaint was resisted by the appellant-promoter on the grounds, inter-alia, that Adjudicating Officer has the authority to try and decide the matter and that the Authority has no jurisdiction to the same. Respondents-allottees defaulted in making payment as per the payment plan and pleaded for dismissal of the complaint.

4. The Learned Authority allowed the complaint and directed the appellant-promoter to pay interest @ 9.30% per annum from due date of possession till handing over of possession.

5. During the pendency of the present appeal, possession of the unit was handed over to the respondents-allottees on 18.07.2023. As possibility of amicable settlement was being explored, appellant-promoter made an offer of lump sum amount of Rs.30 lacs as full and final settlement of claim of the respondents-allottees, as recorded in the order dated 20.12.2023. However, on the next date of hearing i.e. 07.02.2024, the respondents-allottees declined the offer of Rs.30 lacs, despite having taken possession of the unit on 18.07.2023. Thereafter, the matter was heard on merits.

6. Learned counsel for the appellant-promoter contended that valid offer of possession of the unit was made to the respondents-allottees on 07.01.2020 after receiving Occupation Certificate on 24.12.2019. Therefore, delayed possession charges, if any, could, at the most, be granted up to offer of possession i.e. 07.01.2020 and the learned Authority erred in granting the same up to the date of actual delivery of

possession. She further contended that the appellant-promoter was entitled to get holding charges, CAM charges etc. from the date of offer of possession.

7. Per contra, learned counsel for the respondents-allottees argued that as per BBA, possession of the unit was to be delivered up to 25.02.2014. However, the appellant-promoter failed to complete the construction despite lapse of considerable period of more than five years. Entire payment was made in time by the respondents-allottees and at the time of offer of possession on 07.01.2020, only a token amount of Rs. 7,53,325/- was paid to the respondents-allottees towards DPC, which was deficient and as such, the respondents-allottees were within their right not to take actual physical possession of the unit. He further argued that the claim of holding charges or CAM charges is not at all sustainable as the appellant-promoter was at fault and committed lapse, by not handing over the possession up to the agreed date.

8. We have heard learned counsel for the parties and given careful thought to the facts of the case.

9. In the facts and circumstances of the case, it is evident that due date of possession was 25.02.20214. Occupation Certificate was granted to the appellant-promoter on 24.12.2019. Immediately thereafter, i.e. on 07.01.2020, offer of possession was made to the respondents-allottees. On perusal of record, we do not find any force in the contention of learned counsel for the respondents-allottees that the said offer was not a valid offer of possession. Even otherwise, it is found that the offer of possession was not challenged and it was never claimed in the complaint filed before the Learned Authority that the same was invalid offer of possession. So, the argument

raised now in the present appeal that offer was not a valid one, cannot be appreciated and even otherwise, there is no merit in it. The offer of possession by the appellant-promoter on 07.01.2020 was a valid offer and the respondents-allottees could have taken possession on expiry of two months of the offer i.e. up to 07.03.2020. Therefore, the respondents-allottees are entitled to get delayed possession charges from due date of possession as per agreement i.e. 25.02.2014 onwards till 07.03.2020 i.e. date of offer of possession plus two months.

10. So far as the holding charges are concerned, the Hon'ble National Consumer Disputes Redressal Commission, New Delhi (for short, 'NCDRC') in **Consumer Case No. 351 of 2015, titled as Capital Greens Flat Buyer Association and others vs. DLF Universal Ltd.** and another, has held as under :

“As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.”

11. The Hon'ble Supreme Court of India, in Civil Appeal Nos. 3864-389 of 2020 titled as **“DLF Home Developers Ltd. (Earlier Known as DLF Universal Ltd) and another vs. Capital Greens Flat Buyers Association Etc.”** has upheld the above said findings regarding holding charges of the Hon'ble NCDRC. In view of above, the appellant-promoter is not entitled to any holding charges. However, the appellant-promoter is allowed to charge CAM in accordance with the provisions of the agreement.

Appeal No.347 of 2021

12. In view of above, present appeal is partly allowed and the impugned order dated 26.03.2021 passed by Learned Authority at Gurugram is modified to the extent that the appellant-promoter shall pay delayed possession charges/interest to the respondents-allottees from the due date of possession i.e. 25.02.2014 till 07.03.2020 (i.e. date of offer of possession plus two months).

13. The amount of Rs.48,02,368/- deposited by the appellant-promoter with this Tribunal as pre-deposit in view of proviso to Section 43(5) of the RERA Act⁴ along with interest accrued thereon be remitted to the Authority to be disbursed to the appellant-promoter and respondents-allottees as per their entitlement, subject to tax liability, if any, as per law.

14. Pending application(s), if any, also stand disposed of.

15. No order as to costs.

16. Copy of this order be communicated to the parties/ their counsel and Learned Authority for compliance.

17. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

21.07.2025
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⁴Real Estate (Regulation & Development) Act, 2016