

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Date of Decision: June 02, 2025

(1) Appeal No. 250 of 2022

Emaar India Limited (formerly known as MGF Land Limited)
(through its authorized representative Mr. Sayantan Mondal),
306-308, 3rd Floor Square One, C-2, District Centre, Saket,
New Delhi-110017

Appellant.

Versus

Shivam Gupta, resident of L-49D, First Floor, Block-L, Saket,
New Delhi-110017

Respondent

(2) Appeal No. 251 of 2022

Emaar India Limited (formerly known as MGF Land Limited)
(through its authorized representative Mr. Sayantan Mondal),
306-308, 3rd Floor Square One, C-2, District Centre, Saket,
New Delhi-110017

Appellant.

Versus

(1) Pijush Kanti Biswas

(2) Sarbani Biswas

Both residents of House No. 670, 2nd Floor, Sector 22B,
Gurgaon, Haryana

Respondents

Present : Mr. Kunal Dawar, Advocate with
Ms. Tanika Goyal and Ms. Ankita Chaudhary,
Advocates for the appellant.

Mr. Nilotpal Shyam, Advocate for respondent(s).

CORAM:

Justice Rajan Gupta
Rakesh Manocha

Chairman
Member (Technical)

O R D E R:**RAJAN GUPTA, CHAIRMAN**

This order shall dispose of above mentioned two appeals as common questions of law and facts are involved. However, the facts have been extracted from Appeal No. 250 of 2022.

2. Present appeal is directed against order dated 12.10.2021, passed by the Authority¹. Operative part thereof reads as under:

“i).The respondents are 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. 31.12.2018 till the handing over of possession i.e. 21.12.2019. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.

ii) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The rate of interest chargeable from the complainant/allottee by the promoter, in case of default shall be charged at the prescribed rate i.e. 9.30% by the respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e. the delay possession charges as per section 2(za) of the Act.

iii. The promoter may credit delay possession charges in the accounts ledger of the unit of the allottee, if the amount outstanding against the allottee is more than

¹ Haryana Real Estate Regulatory Authority, Gurugram

the DPC this will be treated as sufficient compliance of this order.

iv. If there is no amount outstanding against the allottee or less amount outstanding against the allottee then the balance delay possession charges shall be paid after adjustment of the outstanding against the allottee.

v. The respondents shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondents are also not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

32. Complaint stands disposed of.”

3. It appears that the complainant² applied for a unit in project 'Imperial Gardens' Sector 102, Gurugram. DTCP licence was granted on 10.10.2012. Provisional allotment letter was issued on 28.11.2018. Occupation Certificate was granted to the builder on 17.10.2019, pursuant to which possession was offered to the allottee vide letter dated 11.11.2019. The allottee thereafter took possession on 21.12.2019. The allottee thereafter instituted the instant complaint in October, 2020 claiming DPC³.

4. Learned counsel for the appellant-promoter has primarily argued that due date of possession as per BBA⁴ would be computed on the basis of sixty days of Occupation Certificate which was received by the promoter on 17.10.2019.

² referred to as 'the allottee'

³ Delayed Possession Charges

⁴ Builder Buyer's Agreement

Thus, DPC would be payable in terms of the BBA. The Authority has erred in granting DPC from 31.12.2018 till handing over of possession i.e. 21.12.2019.

5. Learned counsel for the allottee, however, refuted this plea. He submits that in terms of Clause 7(a) of the BBA, the due date of possession would be 31.12.2018. Thus, there is no infirmity with the order passed by the Authority.

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

7. Clause 7(a) of the BBA is reproduced below:

“7. POSSESSION AND SALE DEED

(a) Within 60 (sixty) days from the date of issuance of Occupation Certificate by the concerned authorities, the Company shall offer the possession of the Unit to the allottee. Subject to Force Majeure and fulfilment by the Allottee of all the terms and conditions of this Agreement including but not limited to timely payment by the Allottee of the Total Price payable in accordance with Payment Plan, Annexure-III, along with stamp duty, registration and incidental charges and other charges in connection thereto due and payable by the Allottee and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company shall offer the possession of the Unit to the Allottee on or before 31.12.2018 or such time as may be extended by the competent authority.”

8. A perusal of the aforesaid clause shows that outer-limit was fixed for offer of possession of the unit to the allottee i.e. before 31.12.2018 or till such time as may be extended by the Authority. For the first time, the allottee came to know that

the unit was ready for possession when offer of possession was made to him on 11.11.2019. The allottee thereafter acted promptly and took possession of the unit on 21.12.2019 after making complete payment. As per Clause 7(a), reproduced above, the promoter was bound to offer possession by 31.12.2018 as RERA registration was valid till the said date. The plea of the promoter that due date of possession would have to be computed from the date of grant of Occupation Certificate (17.10.2019) plus two months is mis-conceived. It was not for the allottee to visit various offices and find out whether Occupation Certificate had been granted to the promoter or not. There is nothing on record to show that any letter was 'sent' or 'received' by the allottee informing him that Occupation Certificate had been granted for the project in question. Addressing such a letter was the bare minimum requirement for the promoter to claim benefit in terms of former part of Clause 7(a) of the BBA to claim that due date of possession would be calculated on the basis of expiry of two months from the date of grant of Occupation Certificate (17.10.2019)

9. In view of the aforesaid discussion, we find no merit in the appeals. The same are hereby dismissed.

10. The amount of pre-deposit in both the appeals made by the promoter in terms of proviso to Section 43(5) of the Act⁵ be remitted to the Authority to be disbursed to the allottee(s), subject to tax liability, if any, within 90 days from the date of this order.

⁵ The Real Estate (Regulation and Development) Act, 2016

11. Copy of the order be sent to the parties/their counsel and the Authority.

12. Files be consigned to records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

June 02, 2025
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