

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 435 of 2024

Date of Decision: 01.12.2025

Madhukar Mishra resident of F-17, Ground Floor, East of Kailash, New Delhi.

Appellant.

Versus

Emaar MGF Land Limited (Now Known as Emaar India Limited) Registered office at ECE House, 28 Kasturba Gandhi Marg, New Delhi-110001.

Respondent

Coram:

Justice Rajan Gupta

Chairman

Dr. Virender Parshad

Member (Judicial)

Dinesh Singh Chauhan

Member (Technical)

Present: Mr. Yashvir Singh Balhara, Advocate,
for the appellant.

Mr. Rohit Sangam, Advocate,
for the respondent.

Order:

RAJAN GUPTA, CHAIRMAN (Oral):

Present appeal is directed against order dated 20.02.2024 passed by the Authority ¹. Order dated 17.08.2022 passed by the Authority reads as under:

“The present complaint was filed on 09.05.2022 and registered as complaint no. 1686 of 2022. As per the registry, complainants had sent copy of complaint through speed post as well as through email and proof regarding having the delivery of the complaint made to the respondent is submitted by the complainants as available in the

¹ Haryana Real Estate Regulatory Authority, Gurugram

file. The registry of the authority also sent a notice to the respondent along with a copy of the complaint through speed post of which delivery confirmed on 14.05.2022 as per the tracking report of the speed post available in the file. Registry has also sent the notice along with a copy of the complaint through email on the following email addresses ie., coordination@emaar-india.com and the same is shown to have delivered on the above email addresses as per the report available in the file. It is proper service of the notice.

Written reply has not been filed by the respondent. The counsel for the respondent states at bar that the copy of reply both in hard and soft copy has been supplied to the counsel of complainant and requests for a short adjournment for filing of reply. The respondent is directed to file reply within two weeks i.e., by 31.08.2022 in the registry of the authority. In case reply is not filed within the time allowed, the defense of the respondent may be struck off.

Matter to come up on 24.11.2022 for further proceedings.

2. Learned counsel for the appellant has assailed the order on the ground that the Authority did not consider the plea for restoration of the complaint in the right perspective. It has ignored for consideration the fact that dismissal of the complaint in default, without any opportunity, would deprive the appellant of a hearing on merits. As per him, the omission in pursuing the matter was totally inadvertent. As soon as the appellant came to know about the dismissal of the complainant in default, the appellant-allottee engaged a new counsel and moved application for restoration of the complaint.

3. Prayer for restoration of the complaint has been opposed by Mr. Rohit Sangam. As per him, a perusal of the *zimni* orders shows that the complainant was negligent in pursuing the complaint. The Authority, after affording multiple opportunities to the appellant-allottee, adopted the last resort of dismissing the complaint in default. As per him, the order is sustainable in nature.

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

5. It is apparent that the complainant approached the Authority with the plea that he was entitled to delay possession charges as the promoter had failed to deliver possession of the unit within the stipulated period; there had been considerable delay on the part of the promoter. A perusal of the record would show that the respondent also filed its reply to the complaint. The case was at the stage of culmination, however, at that stage counsel for the appellant failed to appear. As a result, same was dismissed for non-prosecution.

6. During the course of hearing of the appeal, learned counsel for the appellant submits that only one opportunity may be granted to the appellant to address arguments before the Authority below.

7. In view of above, the matter is remanded to the same Authority to afford at least one opportunity of hearing to the appellant to address arguments subject to payment of Rs.15,000/- as costs to be remitted to Poor Patients' Welfare Fund, PGIMER, Chandigarh.

8. Appeal is allowed in the above terms.

9. Parties may appear before the Authority on 14.01.2026. The Authority would afford opportunity after the receipt of payment of costs is produced by the appellant before it.

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

11. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Dr. Virender Parshad
Member (Judicial)

Dinesh Singh Chauhan
Member (Technical)

01.12.2025
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