

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL**Appeal No.135 of 2022****Date of Decision: 27.01.2026**

1. 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 Sayantan Mondal, Aged 33 years.

Appellant

Versus

1. Abhishek Pathak;
2. Mamta Pathak, Both residents of House No. 1018, Sector-40, Gurugram, Haryana.

Respondents

Coram:

Justice Rajan Gupta
Dr. VirenderParshad
Dinesh Singh Chauhan

Chairman
Member (Judicial)
Member (Technical)

Present: Ms.Tanika Goyal, Advocate,
for the appellant.

Mr. Harshit Joon, Advocate,
for the respondents.

ORDER**RAJAN GUPTA, CHAIRMAN (ORAL):**

Present appeal is directed against order dated 12.08.2021 passed by the Authority¹at Gurugram. Operative part thereof reads as under:

H. Directions of the authority

60. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34 (f):

¹Haryana Real Estate Regulatory Authority at Gurugram

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 complainants from due date of possession i.e. 26.08.2013 till 23.01.2021 i.e. expiry of 2 months from the date of offer of possession (23.11.2020). The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.

ii. Also, the amount of Rs.3,82,123/- so paid by the respondent to the complainants towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

iii. The respondent/promoter is not entitled to charge any amount towards GST from the complainants/allottees as the liability of GST had not become due up to the due date of possession as per the buyer's agreement.

iv. The promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, the promoter cannot charge any VAT from the allottees/prospective buyers for the period 01.04.2014 to 30.06.2017 as the same was to be borne by the promoter-developer only. The respondent-promoter is bound to adjust the said amount, if charged from the complainants with the dues payable by him or refund the amount if no dues are payable by them.

v. The complainants are directed to pay stamp duty as per the norms of the State Government.

vi. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainants/allottees 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 14.02.2020.

61. Complaint stands disposed of.

62. File be consigned to registry."

2. It appears that a project in the name and style of "Emerald Estate Apartments at Emerald Estate" was floated by the appellants-promoters in Sector 65, Gurugram. The project was in the nature of Group Housing Colony. Registration under the RERA Act was valid up to 23.08.2022 and as per counsel for the appellant, it was extended thereafter. The allottee applied for a unit measuring 1020 sq. ft. therein and was successful in the allotment process. Occupation certificate in respect of project was granted on 11.11.2020. Due date of delivery of

possession was 26.08.2013. Offer of possession was made to the allottee on 23.12.2020. Admittedly, the allottee took possession of the unit in question on 10.03.2021 and conveyance deed was executed on 29.06.2021. However, in April 2021, they filed a complaint before the Authority, *inter alia*, seeking delay possession charges and refund of GST & HVAT. The plea was resisted by the respondent-promoter. It was stated that the plea regarding refund of GST & HVAT was based on an incorrect understanding of law. It was further submitted that there was a clear default on the part of the allottees in making payments in accordance with the timeline agreed upon between the parties.

3. After hearing rival contentions the matter was decided by the Authority in terms of the order reproduced in the opening paragraph.

4. During the course of arguments today, it has transpired that the allottees have already filed execution petition pursuant to order passed by the Authority. At the outset, Ms. Goyal has raised a plea that grace period as per the terms and condition of the BBA² has not been granted by the Authority. Besides, the issue regarding GST and HVAT has not been appreciated in its correct perspective.

5. Learned counsel for the respondents submits that in the execution preferred by them, he shall only press the claim for grant of delay possession charges.

6. In view of above, we are of the considered view that grace period in terms of clause 11(a) of the BBA needs to be granted to the appellant. As regards the issue of GST & HAVT, the allottees having made a statement that they would not press for refund of the same, no finding needs be given in the instant case.

² Builder Buers' Agreement

7. Clause 11 (a) of the BBA clearly provides for a grace period of 180 days beyond the commitment period for handing over possession. In light of the facts and circumstances of the present case, we find no reason to deny the promoter the benefit of the said clause. Accordingly, due date of possession would come to 26.02.2014 instead of 26.08.2013.

8. The appeal is thus, partly allowed. No other issue survives for adjudication.

9. The amount deposited by the appellant/promoter i.e. Rs. 24,88,378/- with this Tribunal, , in order to comply with the provisions of Section 43(5) of the Act along with accrued interest be remitted to the Ld. Haryana Real Estate Regulatory Authority at Gurugram for disbursement to the respondent-allottees in accordance with law and Rules subject to tax liability, if any.

10. Copy of this order be sent to the parties/their counsel and the Authority for compliance.

11. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Dr. VirenderParshad
Member (Judicial)

Dinesh Singh Chauhan
Member (Technical)

27.01.2026
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