

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 830 of 2022

Date of decision: April 22, 2026

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 authorized representative Mr. Manish Mahajan, aged 33 years s/o Anil Kumar Gupta

Appellant.

Versus

Sunita w/o Mukesh Chandra, R/o R-12A, GF, Uppal Southend Sohna Road, Sector 49, Gurugram

Respondent

CORAM:

**Justice Rajan Gupta
Dinesh Singh Chauhan**

**Chairman
Member (Technical)**

Present: Mr. Kunal Dawar, Senior Advocate with
Mr. Rohit Sangam, Advocate for the appellant.

Mr. Arun Sharma, Advocate for the respondent.

ORDER:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 11.10.2022, passed by the Authority¹. Operative part thereof reads as under:

“7. The counsel further draws attention of the authority towards para No. 25 of the judgment of

¹ Haryana Real Estate Regulatory Authority, Gurugram

*Hon'ble Apex Court in case of **Newtech versus Union of India** wherein it has been held that unqualified right of the allottee to seek refund if the promoter is not able to hand over the possession on the due date and the due date in the instant case was 05.09.2016 and authority has given the liberty to the respondent to even hand over the possession with DPC by 31.12.2018 but the respondent failed to hand over the possession even within this extended period allowed by the authority and hence, the complainant seeking the refund along with interest as per entitlement under section 18(1) of the Act, 2016 and duly upheld by the Hon'ble Apex Court.*

8. In view of the above, the refund is allowed along with prescribed rate of interest.”

2. Brief factual matrix of the case is that the respondent-complainant applied for a residential unit in the project floated by the appellant known as 'Gurgaon Greens', Sector 102, Gurugram. On allotment, she was required to remit the instalments as per buyer's agreement. He remitted Rs.39,73,016/-. On 22.02.2018, she filed a complaint seeking refund of the amount. Her complaint was disposed of vide order dated 16.10.2018. Operative part thereof reads as under:

“39. Thus, the Authority, exercising powers vested in it under section 37 of the Real estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

(i) The respondent is duty bound to hand over the possession of the said unit by 31st December 2018 along with the occupation certificate as committed by the respondent in the affidavit. If the respondent fails to handover the possession by 31.12.2018, the promoter shall refund the money along with interest @10.45%.

(ii) The respondent is directed to give interest @ 10.45% for every month of delay from the due date of possession i.e. 05.09.2016 till handing over the possession of the unit if the possession is not given on the committed date i.e. 31.12.2018 by the respondent then the complainant shall be at liberty to further approach the authority for the refund as provided under the provisions of the RERA Act.

(iii) The respondent is directed to pay interest accrued from 05.09.2016 till the date of handing over the possession on account of delay in handing over of possession which shall be paid to the complainant within 90 days from the date of decision and subsequent interest to be paid by the 10th of every succeeding month.”

3. Stand of the appellant-promoter is that offer of possession was made to the respondent-allottee on 02.06.2019, however, she never came forward to take possession. On the other hand, she filed execution in terms of paragraph No. 39(i) of the order dated 16.10.2018. Her prayer was accepted by the Executing Court directing that the amount paid by the allottee be refunded to her with interest from due date of possession (05.09.2016) till realisation.

4. Learned counsel are *ad idem* that aforesaid order dated 11.10.2022 was passed pursuant to order dated 08.04.2022 passed by this Tribunal in Appeal No. 112 of 2021.

5. We have heard learned counsel for the parties and given due consideration to the facts of the case.

6. It is evident that the promoter was not able to offer possession in terms of order dated 16.10.2018 passed by the Authority i.e. by 31.12.2018. It was actually offered on

02.06.2019. Thus, in the petition filed before the Executing Court, the allottee sought alternate relief for refund of money along with interest. The Executing Court accepted this plea and directed grant of refund along with interest as per Section 18(1) of the Act². It took this recourse in view of the alternative relief granted to the respondent-allottee in paragraph 39(i) of order dated 16.10.2018. While allowing this plea, the Executing Court also referred to the judgment of Hon'ble Supreme Court in **M/s Newtech Promoters and Developers Pvt. Ltd. v. State of UP, 2022(1) RCR (Civil) 367**. However, we feel that in view of entire facts and circumstances of the case, grant of interest should have been restricted till the date of order. It needs to be noticed that during pendency of this case, efforts were made for amicable settlement of the matter, wherein the promoter made an offer for payment of lump-sum amount of Rs.65,00,000/- to the allottee, but she refused to accept it (*see order dated 31.01.2024*).

7. We, thus, partly allow this appeal with direction to the appellant-promoter to refund the amount to the allottee along with interest @ 10.45% p.a. from due date of possession till the date of order passed by the Authority i.e. 11.10.2022.

8. The amount of pre-deposit made by the promoter in terms of proviso to Section 43(5) of the Act, along with interest accrued thereon, be remitted to the Authority for disbursement to the parties according to their entitlement, subject to tax liability, if any.

² The Real Estate (Regulation and Development) Act, 2016

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

10. File be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Dinesh Singh Chauhan
Member (Technical)

April 22, 2026
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