

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 443 of 2022

Date of Decision: May 13, 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 Sayantan Mondal, aged 33 years S/o S. N. Mondal

Appellant.

Versus

1. Rahul Jindal
2. Rekha Jindal
Both Residents of B-231, West Patel Nagar, New Delhi

Respondents

Present: Ms. Ankita Chaudhary, Advocate and
Mr. Rohit Sangam, Advocate for the appellant.

Mr. Balvinder Sangwan, Advocate for the respondents

CORAM:

**Justice Rajan Gupta
Dr. Virender Parshad**

**Chairman
Member (Judicial)**

ORDER:

RAJAN GUPTA, CHAIRMAN:

Present appeal is directed against order dated 01.02.2022, passed by the Authority¹. The operative part thereof reads as under:

“H. Directions of the authority

54. 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):

¹ Haryana Real Estate Regulatory Authority, 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 21.01.2021 i.e. expiry of 2 months from the date of offer of possession (21.11.2020). 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 complainants are directed to take possession of the unit in question within 2 months from the date of this order as per section 19(10) of the Act after clearing outstanding dues, if any.

iv. Interest on the delay payments from the complainants shall be charged at the prescribed rate i.e. 9.30% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges as per section 2(za) of the Act.

v. The respondent is justified in charging the preferential location charges in the facts and circumstances of the present case. Thus, the complainants are liable to pay the same.

vi. The promoter cannot charge any HVAT from the allottees/complainants for the period from 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 allottees with the dues payable by them or refund the amount if no dues are payable by them.

vii. 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.

viii. 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 after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

55. Complaint stands disposed of.

56. 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 appellant-promoter in Sector 65, Gurugram. The respondents were allotted a residential unit in the said project vide provisional allotment letter dated 24.09.2009. Total sale consideration of the unit was Rs.44,32,008/-. The respondent-allottees remitted an amount of Rs.44,69,209/-. Buyer's agreement was executed between the parties on 27.03.2010. As per the agreement, due date of possession was 26.08.2013. Occupation Certificate was granted to the appellant-promoter on 11.11.2020. Immediately thereafter i.e. on 21.11.2020, offer of possession was made to the respondent-allottees. However, the allottees preferred a complaint before the Authority on 28.01.2021 seeking possession and other ancillary reliefs.

3. The Authority considered rival contentions and issued the directions as contained in the opening paragraph of this judgment.

4. The appellant has assailed the aforesaid order. Its limited prayer is that grace period ought to have been granted by the Authority in terms of Clause 11 of the Buyer's Agreement. As per counsel for the appellant, a factual error has been committed by the Authority by directing that HVAT would be paid by the promoter for the period from 01.04.2014 to 30.06.2017.

5. Learned counsel or the respondent-allottees has vehemently opposed the plea. He submits that there is already considerable delay in handing over possession of the unit to the allottees. They have already suffered as the project was not completed within the prescribed period. In such circumstances, the appellant is not entitled to any grace period. As per him, the order passed by the Authority is totally sustainable and needs to be upheld.

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

7. Relevant Clause 11 of the Buyer's Agreement is reproduced hereunder for ready reference:

11. POSSESSION

(a) Time of handing over the Possession

Subject to the terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement and not being in default under any of the provisions of the Buyer's

Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the unit within 36 months from the date of commencement of construction and development of the unit. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of six months, for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the project.”

8. As per clause 11 of the agreement, the possession of the unit was to be handed over within 36 months from the date of commencement of construction and development of the unit and there is a provision of a grace period of six months. It is not in dispute that Occupation Certificate was granted to the promoter on 11.11.2020 and offer of possession was made to the allottees on 21.11.2020. In view of aforesaid clause of the agreement, the promoter is entitled to avail grace period of six months.

9. Further, the promoter challenges the direction of the Authority imposing liability to pay HVAT, however, the promoter never opted for the Scheme under which such liability arose. To that extent, the Authority has committed a factual error. Appropriate course of action in such eventuality was to move an application under Section 39 of the RERA Act before the Authority. However, there is nothing on record to show that the appellant-promoter ever availed such a remedy. Re-appraisal of the factual aspects can be resorted to only in rare cases.

10. Under these circumstances, we partly allow the appeal and decide to grant six months' grace period to the appellant. Due date of possession be computed accordingly.

11. The amount of pre-deposit made by the promoter in terms of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016, along with interest accrued thereon, be remitted to the Authority for disbursement to the parties as per their entitlement, subject to tax liability, if any.

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

13. File be consigned to the record.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Dr. Virender Parshad
Member (Judicial)

May 13, 2026
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