

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 393 of 2021

Date of Decision: April 16, 2026

Mr. Naveen Tokas,

R/o 338/18, Civil Lines, Near Rajiv Chowk, Gurugram-122001.

Appellant-Allottee.

Versus

Ms. Emaar MGF Land Ltd.,

Regd. Address: 306-308, 3rd Floor, Square One, C2, District
Centre, New Delhi-110017.

Respondent-Promoter.

CORAM:

**Justice Rajan Gupta
Dinesh Singh Chauhan**

**Chairman
Member (Technical)**

Present: Mr. Yashvir Singh Balhara, Advocate
for Mr. Ajay Ghangas, Advocate
for the Appellant-Allottee.

Ms. Ankita Chaudhary, Advocate
for the Respondent-Promoter.

ORDER:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 15.03.2021, passed by Haryana Real Estate Regulatory Authority, Gurugram ("the Authority") in Complaint No. 406 of 2020, whereby the Authority upheld the cancellation of the allotted unit and directed the respondent-promoter to refund a sum of Rs.13,41,935/- along with interest at the prescribed rate, i.e. 9.30% per annum from the date of cancellation, i.e. 28.12.2013 till date of order.

2. It appears that the appellant-allottee was provisionally allotted Unit No. PGN-08-0201, 2nd Floor, Building No. 08, measuring 1720 sq. ft., in Group Housing Colony "Palm Gardens" situated at Sector 83, Gurugram, vide allotment letter

dated 26.02.2011. Builder Buyer's Agreement was executed between the parties on 25.05.2011. Total consideration of the unit was Rs.88,16,027/- under the instalment payment plan. The appellant paid a total sum of Rs.35,50,206/- up to the year 2013. Thereafter, despite repeated reminders and a final notice dated 21.06.2013 demanding Rs.17,37,593/-, the appellant failed to make the requisite payments as per the agreed instalment schedule. Although partial payments were made subsequently, no substantial payment followed. Consequently, the respondent-promoter cancelled the allotment on 28.12.2013.

3. Out of the total amount received, the respondent forfeited Rs.22,08,270/- (Rs.9,19,130/- towards delayed payment charges and Rs.12,89,140/- towards earnest money), leaving a balance amount of Rs.13,41,935/- refundable to the appellant-allottee. The Occupation Certificate to the project was granted on 02.05.2019 and the subject unit was subsequently re-allotted to a third party. Thereafter, the appellant-allottee filed a complaint before the Authority at Gurugram on 27.01.2020, nearly six years after cancellation, seeking possession of the unit and delay possession charges.

4. After hearing the parties, the Authority upheld the cancellation, observing that the appellant had defaulted in payment and had approached the Authority after an inordinate delay of six years. In view of third-party rights having been created, the claim for possession or revival of allotment was rejected. However, the Authority directed refund of Rs.13,41,935/- along with interest at the prescribed rate, i.e.

9.30% per annum from the date of cancellation i.e., 28.12.2013 till the date of order, payable within 90 days.

5. Aggrieved by the said order, the appellant has preferred the present appeal. It is contended that payments were withheld due to the respondent's failure to complete the project within the stipulated period. The appellant further challenges the deductions made at the time of cancellation as excessive and seeks equitable relief.

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

7. It is undisputed that the total sale consideration was Rs.88,16,027/- and that the appellant paid Rs.35,50,206/-. The appellant admittedly defaulted in making further payments despite reminders and final notice. The respondent, therefore, was justified in cancelling the allotment on 28.12.2013 after affording due opportunity to the appellant. The cancellation is accordingly upheld.

8. It is also a matter of record that the Occupation Certificate to the project was granted on 02.05.2019 and the subject unit stands re-allotted to a third party after cancellation in the year 2013. In such circumstances, no direction for possession or revival can be granted. However, the deductions effected by the respondent exceed permissible limits. In view of the law laid down by the ***Hon'ble Supreme Court in Godrej Projects Development Ltd. v. Anil Karlekar & Ors. (Civil Appeal No. 3334 of 2023)***, forfeiture of earnest money cannot exceed 10% of the sale consideration. Ten percent of Rs.88,16,027/- precisely equals Rs.8,81,603 (which subsumes

the delayed payment charges of Rs.9,19,130/-). The respondent was entitled to deduct only Rs.8,81,603/- towards earnest money. The refundable amount after precise recalculation comes to Rs.26,68,603/- (Rs.35,50,206/- paid minus Rs.8,81,603/-).

9. Further, it is on record that allotment was cancelled on 28.12.2013, whereas the allottee approached the Authority on 27.01.2020 i.e. after more than six years from the date of cancellation without any cogent reason for such a huge delay in filing the complaint.

10. In **B. L. Sreedhar and others v. V.K.M. Munireddy and others**, AIR 2003 SC 578, Hon'ble the Supreme Court observed as under:

"Lapse of time and delay are most material when the plaintiff, by his conduct may be regarded as waiving his rights, or where his conduct, though not amounting to a waiver, has placed the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards asserted. When, however, an argument against a relief, otherwise just, is founded upon mere delay not amounting to bar by limitation, the validity of that defence must be tried by principles substantially equitable."

11. In these circumstances, this Bench is of the view that the appellant-allottee cannot be absolved of his own defaults. The contention of withheld payments due to project delays lacks merit, as no committed possession date stood breached by 28.12.2013 when cancellation occurred, and the project was duly granted Occupation Certificate on 02.05.2019. To prevent unjust enrichment arising from the undue six-year delay, the appellant-allottee is entitled to interest on the refundable amount only from the date of filing the complaint (27.01.2020) and not from the cancellation date.

12. In view of the foregoing discussion, the appeal is partly allowed. The impugned order dated 15.03.2021 is modified to the extent that Respondent-promoter is directed to refund Rs.26,68,603/- (total paid Rs.35,50,206/- less 10% deduction Rs.8,81,603/) along with interest @ 9.30% per annum from 27.01.2020 till realisation, within 90 days of this order.

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

14. File be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Dinesh Singh Chauhan
Member (Technical)

April 16,2026/
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