

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 1047 of 2025

Date of Decision: July 07, 2026

1. Sandeep Fogaat

2. Neeru Fogaat

Both residents of Tower 18 Flat 601, Gurgaon Greens, Sector 102, Gurugram, (HR) - 122505.

Appellants

Versus

Emaar India Limited (formerly known as Emaar MGF Land Ltd.) having Office at Emaar Business Park, MG Road, Sikandarpur Chowk, Sector-28, Gurugram - 122002.

Respondent

CORAM:

Justice Rajan Gupta

Chairman

Dinesh Singh Chauhan

Member (Technical)

Present: Mr. Sandeep Fogaat, appellant in person.

O R D E R:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 28.05.2025 passed by the Authority¹ at Gurugram in Complaint No. 4921 of 2023, whereby the complaint filed by the appellant-allottees was dismissed as not maintainable on the ground of res judicata.

2. Factual matrix of the case is that the appellant-allottees booked a 3BHK flat bearing unit No. GGN-18-0601 in Tower-18, measuring 1650 sq. ft. in the project of the respondent-promoter namely “Gurgaon Greens”, Sector-102, Gurugram by paying a booking amount of Rs.1,00,000/-. Apartment buyer’s agreement was executed between the parties on 30.01.2019. Total sale consideration of the unit was

¹ Haryana Real Estate Regulatory Authority, Gurugram

Rs.1,11,46,761/-, which stood fully paid by the appellant-allottees. As per agreement, due date of possession was 31.12.2018. Occupation Certificate was granted to the project on 05.12.2018. The respondent-promoter offered fit out possession on 24.05.2019 and possession was handed over on 03.07.2019 to the appellant-allottees. Appellant-allottees initially filed Complaint No. 4457 of 2020 before the Authority seeking relief of delay possession charges (DPC), which was decided on 22.07.2021, pursuant to which a Settlement-cum-Amendment Agreement dated 16.11.2021 was executed and an amount of Rs. 2,84,000/- was paid towards DPC² up to the date of handing over of the possession i.e., 03.07.2019. Subsequently, the appellant-allottees filed a second Complaint No. 2513 of 2022 before the Authority seeking allotment of appropriate parking without additional cost and execution of the conveyance deed. The Authority, vide order dated 05.09.2023, observed that parking had already been allotted and any grievance regarding its location could be pursued before the Adjudicating Officer for compensation, while directing the respondent to execute the conveyance deed within 60 days. The appellant-allottees further contended that despite issuance of the final offer of possession on 02.03.2021 and clearance of all outstanding dues on 01.04.2022, the respondent failed to execute the conveyance deed. Thereafter, the appellant-allottee approached the Authority by filing another Complaint No. 4921 of 2023 seeking delay possession charges for the period from 03.07.2019 to 01.04.2022 at the applicable rate of interest, along with directions for allotment of suitable parking without additional cost and disclosure of the parking policy.

3. Stand of the respondent-promoter before the Authority was that the complaint was not maintainable as the matter stood concluded

²Delay Possession Charges

through earlier proceedings and settlement between the parties. It was specifically pleaded that the claim was barred by the principles of *res judicata* and that the appellant-allottees had already availed appropriate remedies in the earlier complaints.

4. After considering rival contentions of the parties, the Authority dismissed the complaint vide impugned order, holding that the issues between the same parties had already been heard and finally adjudicated in Complaint No. 4457 of 2020 as well as Complaint No. 2513 of 2022 and, therefore, a subsequent complaint on the same cause of action was barred by principles of *res judicata*.

5. Aggrieved by the impugned order, the appellant-allottees have preferred the present appeal before this Tribunal, primarily contending that the Authority erred in dismissing their complaint on the technical ground of *res judicata*. It was further urged that the Authority incorrectly treated the possession granted for fit-outs as final possession, whereas the appellant-allottees are entitled to delay possession charges up to the date of the final offer of possession made by the respondent-promoter, i.e., 02.03.2021, along with an additional period of two months.

6. We have heard the appellant and given careful thought to the facts of the case.

7. Admittedly, the appellant-allottees had earlier filed Complaint No. 4457 of 2020 seeking delay possession charges, which was decided on 22.07.2021, followed by execution of a Settlement-cum-Amendment Agreement dated 16.11.2021, whereby an amount of Rs. 2,84,000/- was paid to the appellant-allottees towards DPC up to the date of handing over possession i.e., 03.07.2019. Thereafter, the appellant-allottees again approached the Authority by filing Complaint

No. 2513 of 2022 on issues relating to parking and conveyance deed, which also stood adjudicated vide order dated 05.09.2023.

8. In the present complaint, the appellant-allottees sought delay possession charges for the period from 03.07.2019 to 01.04.2022 along with ancillary reliefs. However, the claim for DPC is inseparably linked to the issue of possession, which had already been adjudicated and settled conclusively between the parties through Settlement Agreement. Having accepted DPC upto 03.07.2019 without any protest, the appellant-allottees cannot now seek to re-agitate the same issue for a subsequent period by projecting it as a fresh cause of action.

9. The successive claim is clearly barred by the principles of res judicata, including constructive res judicata, as it arises from the same cause of action and pertains to issues that have already attained finality. Even otherwise, the subsequent period now claimed ought to have been raised in earlier proceedings, and failure to do so attracts the bar of constructive res judicata and permitting such a claim would defeat the settled principle of finality in adjudication.

10. Moreover, it is an admitted position that the Occupation Certificate was granted on 05.12.2018 and possession was offered by the respondent-promoter on 24.05.2019. Once possession was offered and subsequently taken on 03.07.2019, the contractual delay, if any, stood crystallized up to that date, thereby rendering the claim of appellant-allottees for delay possession charges up to the alleged date of final offer of possession along with an additional two months, unsustainable. In these circumstances, the Authority has rightly dismissed the complaint as not maintainable.

11. We do not find any legal infirmity in the order passed by the Authority warranting interference by this Tribunal.

12. In view of the above discussion, the appeal is devoid of merit and is accordingly dismissed.

13. Copy of this order be sent to appellant-allottees and the Authority below.

14. File be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Dinesh Singh Chauhan
Member (Technical)

July 07, 2026/mk