

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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Appeal No.234 of 2021  
Date of Decision: 15.03.2022

Emaar MGF Land Limited, Registered Office: 306-308, Square one, C-2 District Centre, Saket, New Delhi-110017.

2<sup>nd</sup> Address:

Corporate Office Emaar Business Park, MG Road, Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Appellant

Versus

Anubhav Gupta through General Power of Attorney (GPA) Holder Mr. Mahesh Chandra Gupta, resident of H-13, Ridgewood Estate, DLF Phase IV, Gurugram (Haryana) 122 009

Respondent

**CORAM:**

Justice Darshan Singh (Retd.),  
Shri Inderjeet Mehta,  
Shri Anil Kumar Gupta,

Chairman  
Member (Judicial)  
Member (Technical)

**Argued by:** Shri Shekhar Verma, Advocate, Ld. counsel for appellant-promoter.

Shri Gaurav Rawat, Advocate, Ld. counsel for respondent-allottee.

[The aforesaid presence recorded through video conferencing]

**ORDER:**

**Anil Kumar Gupta, Member (Technical):**

This appeal has been preferred by the appellant-promoter against the order dated 14.12.2020 passed by the Ld. Haryana Real

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Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority'), whereby complaint No.867 of 2020 filed by the respondent-allottee was disposed of by issuing the following directions: -

- “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 complainant from due date of possession i.e. 01.03.2016 till the handing over of possession. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.*
- iii. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.*

2. As per averments in the complaint filed by the respondent-allottee, he was allotted Unit No.P-GN-12-0305, Third Floor, Building No.12 in Palm Gardens, Sector 83, Gurugram measuring 1900 sq. ft. at a total sale consideration of Rs.1,11,16,515/-. The Buyer's Agreement ('the agreement', for short) was executed between the respondent-allottee along with his parents and the appellant-promoter on 15.12.2011. The payment plan was Construction Linked Payment Plan. The respondent-allottee has paid a total sum of Rs.1,17,42,318/- towards the said unit against the total sale consideration of Rs.1,11,16,516/-. As per Clause 10(a) of the said

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Agreement the appellant was to handover the possession of the unit within a span of 36 months from the date of start of constructions along with grace period of 03 months. The date of start of construction is 30.11.2012. Therefore, the due date of possession comes out to be 01.03.2016. It is further pleaded that he went to the office of the appellant several times and requested them to allow him to visit the site, but it was never allowed saying as they do not permit any buyer-allottee to visit the site during construction period. Once he visited the site, but was not allowed to enter the site and even there was no proper approach road.

3. Further pleaded the respondent-allottee sent an email dated 22.10.2019, to the appellant and made a desire to visit the site before taking possession.

4. Further it was pleaded that the appellant through e-mail dated 31.10.2019, showed its inability to allow the site visit. However, the appellant intimated for arraigning an escorted mock visit as the apartment is under final-finishing stage. Further it was pleaded that vide e-mail dated 11.11.2019, he requested for prior inspection of the unit before taking the possession along with payment of excess paid by him and requested for a copy of OC details, TDS details and taxes paid by him. Thereafter, the complainant sent another e-mail dated 15.11.2019 as a reminder of the above e-mail. It was also pleaded that the appellant vide e-mail dated 18.11.2019 intimated the respondent-allottee that at the time of offer of possession, the unit is

kept in semi-finished stage as the final deep cleaning, installation and final coat of paint is done post finalizing of the date of possession with the duty manager. It was also pleaded that he sent another e-mail dated 12.01.2020 asking the appellant for inspection of the unit before paying for the stamp-duty, car parking space number and holding charges etc. Through e-mail dated 14.01.2020, the appellant allotted car parking Space Nos.B-12-4 and B-12-4A. It was pleaded that the car parking space allotted was not appropriate and the appellant cheated the respondent-allottee by wrongfully charging Rs.3,00,000/-on account of Additional car parking space.

5. He further submitted that the respondent has cheated the complainant by wrongfully charging of Rs.6,65,000/- on account of Mini Golf View and the same is not in existence at the project site instead there is a park. In the relief/main reliefs the respondent-allottee had sought that appellant be asked for not charging monthly maintenance charges for a period of 12 months or more and rectify the holding charges imposed upon him. The following reliefs were sought in the complaint filed before the Ld. Authority:

**“RELIEF SOUGHT**

**INTERIM RELIEF AS PRAYED:**

*It is most respectfully prayed that this Hon’ble Authority be pleased to ensure compliance and issue directions to the respondent in this regard, till the pendency of present*

*Complaint. The Complaint seeks issuance of the following interim relief:*

- i. It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondent to handover the possession after completing the flat in all aspects to the complainant as soon as possible.*
- ii. It is most respectfully prayed that this Hon'ble Authority be pleased to direct the Respondent, not to cancel the allotment of the Unit.*
- iii. It is most respectfully prayed that this Hon'ble Authority be pleased to restrain the Respondent from raising any fresh demand with respect to the Project.*
- iv. It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondent to pay the balance amount due to the complainant from the Respondent on account of the interest, as per the guidelines laid in the RERA, 2016, before signing the conveyance deed/sale deed.*
- v. It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondent not to charge anything irrelevant which has not been agreed to between the parties like Interest Free Maintenance Security Deposit, Fixed Deposit towards the H VAT, which in any case is not payable by the complainant.*

- vi. *It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondent not to ask for the monthly maintenance charges for a period of 12 months or more before giving actual possession of unit completed in all aspects.*
- vii. *It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondent no to force the complainant to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.*
- viii. *It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondent to kindly handover the possession of the unit after completing in all aspect to the complainant and not to force to deliver an incomplete unit.*
- ix. *It is most respectfully prayed that this Hon'ble Authority be pleased to pass any other interim relief(s) which this Hon'ble Authority thinks fit in the interest of justice and in favour of the Complainant.*

**MAIN RELIEF AS PRAYED:**

*In light of the present facts and circumstances and in the Interest of Justice, it is most humbly prayed that this Hon'ble Forum may graciously be pleased:*

- i. *Allow the Complaint, directing the Respondent to handover the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BA.*
- ii. *Direct the Respondent to pay the interest on the total amount paid by the Complainant at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession as the possession is being denied to the complainant by the Respondent in spite of the fact that the complainant desires to take the possession.*
- iii. *It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondent to pay the balance amount due to the complainant from the Respondent on account of the interest, as per the guidelines laid in the RERA, 2016, before signing the Conveyance Deed/ Sale Deed.*
- iv. *It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondent from raising fresh demand for payment under any head, as the petitioner had already made Full payment as per Constriction Linked Plan.*

- v. *It is most respectfully prayed that this Hon'ble Authority be pleased to quash the illegal demand of respondent on account of HVAT of Rs.2,11,447; and*
- vi. *It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondent to rectify the wrong Holding Charges impost upon the complainant.*
- vii. *It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondent to refund the amount of Rs.3,00,000.00 charged on account of additional car parking space as there is no drive way for car parking no.B/ 12-4A.*
- viii. *It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondent to refund the amount of Rs.6,50,000.00 collected in the name of Mini Gold View as same is tower park at the project site.*
- ix. *It is most respectfully prayed that this Hon'ble Authority be pleased to quash the illegal demand of respondent on account of Advanced monthly maintenance for 24 months or more.*
- x. *It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondent not to force the complainant to sign any Indemnity cum*



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*undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.*

*xi. It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondent to kindly handover the possession of the unit after completing in all aspect to the complainant and not to force to deliver an incomplete unit.*

*xii. It is most respectfully prayed that this Hon'ble Authority be pleased to order the Respondent to provide the exact lay out plan of the said unit.*

*xiii. Pass such other or further order(s), which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."*

6. The appellant contested the complaint on the grounds *inter alia* that the complaints pertaining to refund, compensation and interest are to be decided by the Adjudicating Officer under Section 71 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred, 'the Act') read with Rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred, the Rules) and not by the Authority.

7. It was further pleaded that the subject unit was allotted to the respondent-allottee vide provisional allotment letter dated 16.11.2011 against Construction Linked Payment Plan for remittance

of sale consideration. That the application for issuance of occupation certificate was made on 11.02.2019 and the occupation certificate was granted on 17.10.2019. The respondent-allottee was offered possession vide letter dated 22.10.2019. The respondent-allottee was called upon to remit balance payment and to complete the necessary formalities/documentation necessary for handover of the said unit. The appellant had already credited an amount of Rs.6,23,447/- to the account of the complainant as compensation and also credited an amount of Rs.6,04,501/- as Early Payment Rebate (EPR) to the account of the complainant. In reply to the relief/main reliefs sought by the respondent-allottee in complaint, the appellant has pleaded that the contentions of the respondent-allottee for not charging monthly maintenance charges and holding charges are not correct as the possession of the said unit complete in all respects has already been offered by the appellant and the respondent-allottee is not coming forward to take the possession of the said unit for reasons best known to him.

8. All other pleas raised in the complaint were controverted and it was pleaded that the respondent/allottee were not entitled for any relief in the facts and circumstances of the case and thus prayed for dismissal of the complaint.

9. After hearing Ld. counsel for both the parties and appreciating the material on record, the Ld. Authority disposed of the complaint filed by the respondent/allottee vide impugned order dated

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14.12.2020 issuing directions already reproduced in the upper part of this order.

10. We have heard Ld. counsel for the parties and have meticulously examined the record of the case.

11. Both the parties have filed their written arguments/submissions.

12. Initiating the arguments, Shri Shekhar Verma, Ld. counsel for the appellant contended that at the time of filing of the main appeal, an amount of Rs.38,97,868/- has been deposited by the appellant in compliance to the provisions of proviso to Section 43(5) of the Act. He further contended that an amount of Rs.14,13,377/- has been paid in excess. The justification of excess amount was submitted in the tabular form in the written arguments which is as under:-

SN	Particulars/Head	Amount
1.	<b>Total Amount</b> received from the Allottee:	Rs.1,02,59,664.00
2.	EDC/IDC Component	Rs.5,55,085.00
3.	GST/Service Tax	Rs.4,57,205.00
4.	HVAT Amount	Rs.1,43,272.00
5.	<b>Net Amount</b> received by the Appellant Less statutory dues passed on to the statutory authorities. (1-(2+3+4))	Rs.91,04,102.00

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6.	Total compensation calculated on Rs.91,04,102.00 @ 9.3% per annum	Rs.31,07,938.00
7.	Less the compensation already credited in the Account of the Customer as reflected in the Final Statement of Account against <b>Entry No.70 (Page No.189 of the paper-book).</b>	Rs.6,23,447.00
8.	Net Delay compensation	Rs.24,84,491.00
9.	Amt. deposited in compliance of Rule 43(5)	Rs.38,97,868.00
10.	Amount paid in excess (9-8)	Rs.14,13,377.00

13. He further contended that the impugned order at Page No.36 of the paper-book records that the appellant has received Rs.1,15,02,318/-, whereas, the actual amount received by the appellant is Rs.1,02,59,664/- and the differential amount is actually Early Payment Rebate (EPR) and benefits including compensation credited in the account. The amounts under the said Heads, has not been paid by the allottees.

14. He further contended that in the present case, possession has been accepted by the respondent-allottee and, as such, he cannot claim any delayed period possession interest on the statutory dues/charges, which have been passed on to the Statutory Authorities. He further contended that deposit of the aforesaid statutory dues with the Statutory Authorities cannot be questioned,

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inasmuch as, occupation certificate has been issued by the competent authority and the same is not issued unless government/statutory dues are paid. The onus is upon the allottees to rebut this presumption and on record it is not even his suggested case that these dues have not been paid/forwarded to the Statutory Authority. Further, the project is registered with HRERA, Gurugram vide Memo No.H-RERA-142/2017/1712 dated 24.10.2017 and status of statutory dues can also be confirmed from the Ld. Authority. He further contended that the aforesaid statutory dues are attached to the apartment and since the present case is not a case of refund and the aforesaid dues having not been retained by the appellant cannot be counted towards the calculation of alleged delayed period possession interest.

15. He further contended that the possession of the unit had been offered on 22.10.2019 and the present complaint has been filed on 24.02.2020 and therefore, the appellant is entitled to charging of holding charges and CAM charges etc. from the date of offer of possession which is in consonance with the direction of the Authority. The parties had agreed to the aforesaid charges.

16. He further contended that the provisions of Act nowhere explain or provide for the mode and manner for offering possession by a promoter or acceptance of possession by an allottee. The appellant contended that Clause 4.10(2) of Haryana Building Code, 2017 (hereinafter referred, 'the Code'), also provides that no owner shall

occupy or allow any other person to occupy new building or part of a new building or any portion whatsoever until such building or part thereof has been certified by the competent authority having been completed in accordance with the permission granted and an occupation certificate has been issued in accordance with law.

17. He further contended that if the occupation certificate is issued in the aforesaid terms, presumption in law would be that the appellant is in a position to offer valid possession to an allottee and an offer of possession after obtaining the occupation certificate would satisfy the mandate of proviso to Section 18(1) of the Act.

18. He further contended that as per Clause 7.1 of the Model Agreement for sale attached to the Rules as Annexure A would also support the opinion of the appellant that if the promoters assures to handover the possession, as per the agreed terms and conditions and further, Clause 7.2 (A) & (B) of the Model Agreement for sale provides that upon receipt of statutory permission/occupation certificate possession is just to be offered to an allottee and in case, there is failure on the part of the allottee to accept possession after receiving intimation of offer of possession, he shall be liable to pay maintenance charges and holding charges.

19. He further contended that the appellant is entitled to levy holding charges @ Rs 7.50/- per square feet of the super area in terms of the Clause 13 of the Agreement at Page 155 of the paper-book. He further contended that the aforesaid charges shall be recovered by the

appellant from the respondent from the date of offer of possession and these amounts will be adjusted at the time of final calculation before execution of conveyance deed as these charges are recurring in nature. The respondent-allottee has accepted the order and the direction passed therein by the Ld. Authority.

20. He further contended that the time of delivery of possession was never the essence of the contract. He also referred to Clause 13 of the Agreement reproduced at para Nos.101-102 of the paper-book. He contended that there is no delay in offer of possession and Ld. Authority has wrongly inferred that the time was the essence of the contract. He further contended that the respondent-allottee continued to pay sale consideration and other charges till 24.08.2017 and as the parties clearly understood that the payment plan is construction linked. The claim of the respondent-allottee that due date of possession was 01.03.2016 is an erroneous assumption in law and the view taken by the Ld. Authority in this regard is absolutely illegal. In fact, on record what had been agreed between parties was that only timely payment shall be the essence of the contract.

21. He further contended that it is only in the case of time linked payment plan, that the plea that "time is the essence of the contract" is available and that, too, when the entire payment is made within the agreed time frame.

22. He further contended that as per the provisions of the Act, the Ld. Authority did not have the jurisdiction to adjudicate and

decide the complaint. Further, the interpretation of the Rules is still pending before the Hon'ble Supreme Court of India. He further contended that while rendering judgment in **M/s Newtech Promoters and Developers Pvt. Ltd. v. State of UP & others 2021 SCC Online SC 1044**, the Hon'ble Supreme Court had no occasion to deal with Section 31 in the context of Rules 28 & 29 of the Rules.

23. With these pleas, he contended that the appeal may be accepted and the complaint filed by the respondent-allottee be dismissed being bad in the eye of law.

24. Per contra, Ld. counsel for the respondent-allottee has defended the impugned order on the ground that each and every averment and statement made by the appellant is denied by the respondent as false and lacking in proof, unless the same is specifically admitted. He contended that the Ld. Authority has every jurisdiction to decide the matter. He further contended that as per the demands raised by the appellant based on the payment plan, the respondent-allottee in order to buy the captioned unit already paid a total sum of Rs.1,15,02,318/- towards the said unit against total sale consideration of Rs.1,11,16,516/-.

25. He further contended that the respondent-allottee sent an e-mail dated 22.10.2019 to the appellant stating and demanding the refund of Rs.6,25,802/- on account of balance overdue/due lying in the EPR account with the appellant and asked the appellant to calculate penalty for delay in giving possession at the same rate at



which appellant was giving to other buyers/allottee. He further contended that the appellant sent an e-mail dated 31.10.2019 to the respondent-allottee stating that they regret their inability to grant permission for the site visit and further, stated that the appellant would be happy to arrange an escorted mock visit, however, would like to apprise that the apartment is under final finishing stage and the property management team does a pre-inspection before inviting for home orientation.

26 He further contended that the appellant even after collecting more than 100% of the total sale consideration is not handing over the physical possession of the unit to the respondent-allottee. He further contended that even after the impugned order of the Ld. Authority and repeated request being made by the respondent-allottee, the appellant is not handing over the possession of the unit.

27. With these contentions he contended that the appellant is not entitled for any relief and prayed for possession of the unit and dismissal of appeal.

28. We have duly considered the aforesaid contentions. Ld. counsel for the appellant has challenged the impugned order on the ground of jurisdiction and contended that the Ld. Authority did not have the jurisdiction to adjudicate and decide the complaint filed by the respondent-allottee. The respondent-allottee had sought possession of the unit along with delayed possession charges. The

Hon'ble Apex Court in **M/s Newtech Promoters' case (supra)** has laid down as under:-

*“86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like ‘refund’, ‘interest’, ‘penalty’ and ‘compensation’, a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer*

*under Section 71 and that would be against the mandate of the Act 2016.”*

29. The aforesaid findings of the Hon'ble Apex Court are a complete answer to the contentions raised by Ld. counsel for the appellant. The Hon'ble Apex Court has categorically laid down that it is the regulatory authority which has power to examine and determine the outcome of a complaint with respect to refund and interest.

30. In view of the aforesaid authoritative pronouncement of the Hon'ble Apex Court, we cannot find any fault with the jurisdiction exercised by the Ld. Authority.

31. The contentions of the Ld. counsel for the appellant that the interpretation of the Rules is still pending before the Hon'ble Supreme Court of India and the Apex Court had no occasion to deal with the Section 31 in context of Rules 28 and 29 of the Rules, has been settled by the Division Bench of Hon'ble Punjab and Haryana High Court in **“Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others Law Finder Doc Id#1936807”**.

The relevant paras of the above said judgment reads as under:-

*“23) The Supreme Court has already decided on the issue pertaining to the competence/power of the Authority to direct refund of the amount, interest on the refund amount and/or directing payment of interest for delayed delivery of possession or penalty and interest*

*thereupon being within the jurisdiction of the Authority under Section 31 of the 2016 Act. Hence any provision to the contrary under the Rules would be inconsequential. The Supreme Court having ruled on the competence of the Authority and maintainability of the complaint before the Authority under Section 31 of the Act, there is, thus, no occasion to enter into the scope of submission of the complaint under Rule 28 and/or Rule 29 of the Rules of 2017.*

24) *The substantive provision of the Act having been interpreted by the Supreme Court, the Rules have to be in tandem with the substantive Act.*

25) *In light of the pronouncement of the Supreme Court in the matter of M/s Newtech Promoters (supra), the submission of the petitioner to await outcome of the SLP filed against the judgment in CWP No.38144 of 2018, passed by this Court, fails to impress upon us. The counsel representing the parties very fairly concede that the issue in question has already been decided by the Supreme Court. The prayer made in the complaint as extracted in the impugned orders by the Real Estate Regulatory Authority fall within the relief pertaining to refund of the amount; interest on the refund amount, or directing payment of interest for*

*delayed delivery of possession. The power of adjudication and determination for the said relief is conferred upon the Regulatory Authority itself and not upon the Adjudicating Officer.*

26) *Hence, in view of the authoritative pronouncement of the Supreme Court in the matter of **M/s NewTech Promoters and Developers Private Limited Vs. State of UP And Others etc.**, as recorded in Para 86 thereof, the Authority would have the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount as well as for payment of interest on delayed delivery of possession and/or penalty and interest thereon. The jurisdiction in such matters would not be with the Adjudicating Officer.”*

32. Thus, with the aforesaid findings of the Hon'ble High Court of Punjab and Haryana the pendency of the Haryana matters will not affect the powers of the Ld. Authority to deal with the complaint of possession of unit along with interest on account of delayed delivery of possession.

33. Ld. counsel for the appellant has also contended that the appellant/promoter cannot be burdened with interest on the amount of external development charges and Goods & Service Tax and GST/VAT etc. This plea raised by Ld. counsel for the appellant

deserves outright rejection on the ground that no such plea has been taken by the appellant either in the reply to the complaint or in the grounds of appeal. Moreover, there is no material on record to show as to how demand for external development charges was raised by the government, how much development charges were actually deposited by the appellant, when the said amount of external development charges was collected from the respondent-allottee and when the said amount was further deposited with the government. Thus, this plea of the appellant has no merits and is therefore rejected.

34. Ld. counsel for the appellant contended that a valid offer of possession of the unit was made on 22.10.2019 and the present complaint has been filed on 24.02.2020, therefore, the appellant is entitled to charging of holding charges and maintenance from the date of offer of possession. Whereas, the Ld. counsel of the respondent-allottee contended that though the respondent-allottee on the demand of the appellant has paid Rs.1,15,02,318/- towards the said unit against total sale consideration of Rs.1,11,16,516/- i.e. more than 100% of the due payment, yet the actual possession has still not handed over to him and therefore holding charges and maintenance charges are not payable by him.

35. It is admitted fact that a total amount credited into account of the respondent-allottee is Rs.1,15,02,318/- which includes an amount of Rs.6,23,447/- and Rs.6,04,501/- as compensation and Early payment rebate (EPR) respectively.

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36. The appellant issued offer of possession of the unit to the respondent allottee vide its letter dated 22.10.2019 (page 183 to 187 of the paper book) and asked for making the payment of requisite dues as per statement attached as annexure I and asked to complete the documentation on or before 23.11.2019 to enable them to process of handover of the unit. As per this letter, it was the precondition of making the payment of dues before the handover of the unit. As per this statement of accounts, an amount of Rs.9,52,279/- was payable by the allottee. This statement of accounts mentions that an amount of Rs.6,23,447.26/- has been already adjusted against Current demand. However, there is no mention of the adjustment/payment of EPR.

37. After the receipt of the offer of possession dated 22.10.2019, the respondent allottee sent an email dated 22.10.2019 to appellant for visit to the site and for possession of the unit before Diwali and demanded payment of Rs.6,25,802/- on account of balance overdue/ due lying in the EPR account with the appellant and further asked the appellant to calculate delay possession charges at which appellant was giving to other buyers/ allottee.

38. The appellant through its email dated 31.10.2019, showed its inability to grant permission for the site visit. However, intimated the respondent-allottee that they would be happy for arranging escorted mock visit as the apartment is under finishing stage.

39. Similarly, vide an email dated 10.11.2019 to the appellant, the respondent allottee requested for prior inspection before taking possession along with payment of excess paid by him. Through the above e-mail the respondent-allottee also requested copy of OC, details of TDS and details of Taxes paid by him. Another email dated 15.11.2019 a reminder to the above was also sent by the respondent-allottee to the appellant. The appellant vide email dated 18.11.2019 intimated the respondent-allottee that at the time of offer of possession, the unit is kept in semi-finished stage, as the final deep cleaning, installation and final coat is done post finalizing of date of possession with duty manager. Vide e-mail dated 12.01.2020, respondent-allottee asked the appellant for inspection of the unit before he pays for the stamp duty, car parking space number and rate of holding charges etc. The Car parking for which the allottee had already paid in the sale consideration was allotted to him vide appellant's email dated 14.01.2020 i.e. much after the offer of possession.

40. The appellant in its reply to the complaint, para 11 page 120 of paper book, mentions that the possession of the said unit was offered vide letter of offer of possession dated 22.10.2019 and the complainant was called upon to remit the balance payment and complete the formalities/ documentation necessary for handover of the said unit to him. In this para itself it is mentioned that the appellant has credited the amount of Rs.6,23,447/- and



Rs.6,04,501/- as compensation and EPR respectively. Appellant in its reply to the complaint, para 12 page 120 of paper book, mentions that till date the respondent allottee has not paid the outstanding amount of Rs.9,74,062/- (inclusive of holding charges, security for VAT, Stamp Duty and e-challan charges) to the appellant

41. From the pleadings of the parties, we find that the appellant has only considered the payment of amount of Rs.1,02,59,664/- paid by the respondent-allottee and the amount of Rs.6,23,447/- as delayed compensation as per its own terms due to the respondent-allottee. The appellant had not credited the amount of Rs.6,04,501/- on account of EPR at the time of offer of possession and made a demand of the balance of the total sale consideration amount from the respondent allottee. As per the record, the respondent-allottee was asking payment due to him for the excess amount charged by the appellant regarding Early Payment Rebate (EPR) along with delayed possession interest. The appellant though credited the said amount of EPR being asked by the respondent-allottee but much afterwards. The EPR becomes due to the allottee as soon as the payment is made by him or in any case the payment/adjustment of EPR had become due at the time of offer of possession. The appellant instead of paying back the excess due to the allottee at the time of offer of possession demanded more amount. The matter got complicated further as the possession could not be handed over to the respondent-allottee within the time specified in the

letter of possession on account of demand of dues at the time of offer of possession and thereafter the appellant started demanding holding charges and maintenance charges. Subsequently when EPR was credited in the account of the respondent-allottee, a demand of holding charges and maintenance charges was raised. Thus, with no fault of the allottee he was not given possession of the unit though he had paid much more amount even as per the statement of account of the appellant. Even the car parking was allotted on 14.01.2020 much after the offer of possession i.e. on 22.10.2019. The appellant has not taken any plea regarding holding charges and maintenance charges or any other issue except that of jurisdiction of Id. Authority in the grounds of appeal.

Regarding holding charges, the Hon'ble National Consumer Disputes Redressal Commission, New Delhi (for short, 'NCDRC') in Consumer Case No.351 of 2015, **Capital Greens Flat Buyer Associations and others vs. DLF Universal Ltd. and another** has held as under:

*“As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the*

*allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges through it would be entitled to interest for the period the payment is delayed.”*

The Hon'ble Supreme Court of India in Civil Appeal Nos.3864-3889 of 2020 titled as **“DLF Home Developers Ltd. (Earlier Known as DLF Universal Ltd) and another vs. Capital Greens Flat Buyers Association Etc. Etc.”** has upheld that above said findings regarding holding charges of the Hon'ble NCDRC.

Thus, we find no merit in the plea of the appellant for grant of holding charges and maintenance charges from due date of offer of possession i.e. 01.03.2016 till the handing over of the possession.

42. Ld. counsel for the appellant contended that the impugned order at Page No.36 of the paper-book records that the appellant has received Rs.1,15,02,318/- from the respondent allottee. This amount includes an amount of Rs.6,23,447/- which stood credited to the account of the respondent-allottee as compensation for delay in possession of the unit. This amount of Rs.6,23,447/- also stood mentioned in the final statement of account against Entry No.70 mentioned at Page No.189 of the paper-book. This fact that an amount of Rs.6,23,447/- stood credited to the respondent-allottee as compensation for delay in handing over the possession has been very fairly admitted by the Ld. counsel of the respondent-allottee. Ld. Counsel of the appellant contended that the interest would be

applicable on the amount which the respondent-allottee has actually paid.

43. The delayed possession interest is not payable on compensation already credited in the account of the respondent-allottee. This plea of the appellant is correct and logical. Therefore, in view of the aforesaid discussions, it is held that the appellant is liable to pay the interest as delayed possession charges on the amount i.e. (Rs.1,15,02,318/- minus Rs.6,23,447/- = Rs.1,08,78,871/-) from 01.03.2016 till the handing over of the possession.

44. The appellant has not raised any plea in the grounds of appeal regarding delayed possession period as allowed by the Ld. Authority in the impugned order. Also no arguments regarding the same was forwarded by the Ld. counsel for the appellant. Moreover, as is explicit from the record, more amount than the total sale consideration of the unit, stood credited in the account of the respondent-allottee at the time of offer of possession.

45. Thus, keeping in view our aforesaid discussion, the appeal filed by the appellant is partly allowed as per the above said observations and the impugned order of Authority is modified to the extent that the appellant shall pay the delayed possession interest @ 9.3% per annum on the amount of Rs.1,08,78,871/- from the due date of possession i.e. 01.03.2016 till handing over of the possession. The interest on the amount, if any, which has been paid after due date

## Appeal No.234 of 2021

of possession i.e. 01.03.2016 shall be payable from the date on which the amount has been paid till the handing over possession.

46. The amount deposited by the appellant-promoter i.e. Rs.38,97,868/- with this Tribunal, along with accrued interest, in order to comply with the provisions of Section 43(5) of the Act be remitted to the Ld. Haryana Real Estate Regulatory Authority, Gurugram for disbursement to the respondent-allottee in accordance with law and Rules.

47. The copy of this order be communicated to parties/Ld. counsel for the parties and the Ld. Authority for compliance.

48. File be consigned to the records.

Announced:  
March 15<sup>th</sup>, 2022

Justice Darshan Singh (Retd.)  
Chairman,  
Haryana Real Estate Appellate Tribunal,  
Chandigarh

Inderjeet Mehta  
Member (Judicial)

Anil Kumar Gupta  
Member (Technical)

*Manoj Rana*

## Appeal No.234 of 2021

Emaar MGF Land Ltd.  
Versus  
Anubhav Gupta  
Appeal No.234 of 2021

**Present:** None.

Vide our separate detailed order judgment of the even date, the appeal is partly allowed as per the observations made in our separate detailed order and the impugned order of Authority is modified to the extent that the appellant shall pay the delayed possession interest @ 9.3% per annum on the amount of Rs.1,08,78,871/- from the due date of possession i.e. 01.03.2016 till handing over of the possession. The interest on the amount, if any, which has been paid after due date of possession i.e. 01.03.2016 shall be payable from the date on which the amount has been paid till the handing over possession.

Copy of the detailed order be communicated to the parties/learned counsel for the parties and the learned Haryana Real Estate Regulatory Authority, Gurugram.

File be consigned to the records.

Justice Darshan Singh (Retd.)  
Chairman,  
Haryana Real Estate Appellate Tribunal,  
Chandigarh

Inderjeet Mehta  
Member (Judicial)

Anil Kumar Gupta  
Member (Technical)

15.03.2022  
Manoj Rana