

Emaar India Ltd.  
Vs.  
Jaishree Jain and another  
Appeal No.33 of 2019

Present: Shri Kunal Dawar, Advocate,  
Ld. counsel for the appellant.  
  
Shri Atul Goyal, Ld. proxy counsel for  
Shri Aproov Jain, Advocate,  
Ld. counsel for the respondent.

The present appeal has been preferred against the order dated 05.09.2018 passed by the Ld. Haryana Real Estate Regulatory Authority, Gurugram (for short, 'the Authority') in Complaint No.405 of 2018 filed by the respondent-allottee.

2. The said complaint was disposed of by the Ld. Authority with the following directions:-

*“(i) The respondent is directed to give the physical possession of the said flat to the complainant on the date committed by the respondent i.e. 31.12.2018 for handing over the possession.*

*(ii) The respondent is directed to give interest to the complainants at the prescribed rate of 10.45% on the amount deposited by the complainants for every month of delay from the due date of possession i.e. 11.08.2017 till 05.09.2018 within 90 days of this order and thereafter, on 10<sup>th</sup> of every month of delay till the handing over of possession.*

*(iii) If the possession is not given on the date committed by the respondent in the registration application then the complainants shall be at liberty to further approach the authority for the remedy as provided under the provisions, i.e. Section 19(4) of the Act *ibid*.*

3. As per the aforesaid directions, the appellant-promoter was directed to give physical possession of the flat to the respondent-allottee on the date committed by the appellant-promoter i.e. 31<sup>st</sup> December, 2018. In the third direction, it was mentioned if the possession is not given on the committed date by the respondent in the registration application then the complainant shall be at liberty to further approach the authority for the remedy as provided under the provisions of Section 19(4) of the Real Estate (Regulation and Development) Act, 2016 (for short, 'the Act'). In the impugned order, the respondent-allottee was awarded interest for delayed possession at the prescribed rate.

4. It is an admitted fact that during the pendency of the present appeal, the respondent-allottee has exercised the liberty granted to him vide third direction and the respondent-allottee has filed the fresh complaint for refund of the amount along with interest. Once the respondent-allottee has chosen to file the fresh complaint to claim the relief of refund, it shows that the respondent-allottee has no intention to execute the impugned order.

5. So, the present appeal is hereby disposed of as such. The amount deposited by the appellant with this Tribunal to comply with the provisions of proviso to Section 43(5) of the Act be returned/refunded to the appellant-promoter along with interest accrued subject to tax liability, if any, as per law and rules.

6. However, it is made clear that in case the respondent-allottee fails in getting the claim of refund and he still wants to claim the relief granted in the impugned order, the appellant-promoter shall be at liberty to get the present appeal revived, however, subject to compliance of provisions of proviso to Section 43(5) of the Act.

7. Copy of this order be sent to the parties/Ld. counsel for the parties and Ld. Haryana Real Estate Regulatory Authority, Gurugram for information and necessary compliance.

8. File be consigned to the record.

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

Inderjeet Mehta  
Member (Judicial)

Anil Kumar Gupta  
Member (Technical)

02.05.2022  
Manoj Rana