

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.228 of 2021
Date of Decision: 11.05.2022

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

2nd Address:

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

Appellant

Versus

Nishat Hasin Khan, Flat No.204, Pearl Court-3, Essel Towers, M.G.
Road, Gurugram, Haryana 122 002

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 Varun Chugh, Advocate,
Ld. counsel for respondent-allottee.

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 Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority'), whereby complaint No.2407 of 2019 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. 11.01.2016 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.*
- ii. However, the respondent has already paid a sum of Rs.5,50,000/- towards delay in handing over possession at the time of offer of possession, therefore, the said amount shall be adjusted towards the amount to be paid by the respondent/promoter as delay possession charges under proviso to Section 18(1) read with rule 15 of the Rules.*
- iii. The complainant is directed to take over the possession of the said apartment within period of one month.*
- iv. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.*

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v. Interest on the due payments from the complainant shall be charged at the prescribed rate @ 9.30% by the promoter which is the same as is being granted to the complainant in case of delay possession charges.”

2. As per averments in the complaint filed by the respondent-allottee, he was allotted Unit No.PGN-08-0002, Ground Floor, Building No.8, Palm Gardens, Sector 83, Gurugram measuring 1850 sq. ft., super area at a total sale consideration of Rs.1,33,20,962/-. The Buyer's Agreement (for short, 'the agreement') was executed between the parties on 11.10.2012. The payment plan was Construction Linked Payment Plan. The respondent-allottee has paid a total sum of Rs.1,31,03,641/- as per the statement of accounts dated 03.05.2019 and 07.06.2019. As per Clause 10(a) of the agreement, the appellant was to handover the possession of the unit within a span of 36 months plus grace period of 03 months for applying and obtaining the CC/OC in respect of the unit and/or the project. Therefore, the due date of handing over possession of the subject unit comes out to be 11.01.2016.

3. It was further pleaded that the respondent-allottee was paying the instalments in due time and the same is acknowledged by release of Early Payment Rebate (EPR) by the respondent-allottee.

4. It was further pleaded in the complaint that an amount of Rs.7,50,000/- was paid to the appellant by the respondent-allottee

towards booking of the apartment in question on 29.05.2012. The possession was delayed by 03 years and 03 months. It was further pleaded that in some of the replies to the emails sent by the respondent-allottee, the officials of the appellant confirmed that the delay compensation would be as per applicable provisions of RERA. However, while issuing intimation of possession on 03.05.2019, the respondent credited an amount of Rs.5,50,933/- to the respondent-allottee as delay compensation as per the agreement and not as per the applicable provisions of RERA despite commitments that the delay compensation would be as per applicable provisions of RERA. The following reliefs were sought in the complaint filed before the Ld. Authority:-

“RELIEF SOUGHT

1. *To direct the respondents being jointly and severally liable to pay the complainant as he is entitled for delay compensation at prescribed rate of interest i.e. 10.75% per annum as per the provisions of section 18(1) of the Real Estate (Regulation & Development) Act, 2016.*
2. *Thereafter, delayed possession interest be paid pro rata on a monthly basis before the 10th of every month till the possession is handed over.*
3. *A sum of Rs.50,000/- to be paid to me towards legal costs.*

4. *Any other order as this Hon'ble Authority deems fit."*

5. The appellant contested the complaint on the grounds that the respondent-allottee has filed the complaint seeking delayed possession charges/interest on account of alleged delay in delivery of possession of the apartment booked by the complainant. That complaints pertaining to compensation and refund are to be decided by the Adjudicating Officer under Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called, 'the Act') read with Rule 29 of the Real Estate (Regulation and Development) Rules, 2017 (hereinafter called, 'the Rules') and not by the Ld. Authority.

6. It was further pleaded that the said apartment was provisionally allotted in favour of the complainant vide provisional allotment letter dated 11.06.2012. The agreement was executed between the respondent-allottee and the appellant on 11.10.2012.

7. It was further pleaded that the respondent-allottee has opted for a construction linked payment plan for remittance of the sale consideration for the unit in question. However, right from the beginning, the complainant was extremely irregular with regard to payment of instalments. The appellant was constrained to issue payment request letters, reminders, etc. to the complainant requesting him to make payment of outstanding amounts payable by him under the payment plan opted by him.

8. It was further pleaded that the appellant had submitted an application dated 21.12.2018 for grant of occupation certificate before concerned statutory authority. The occupation certificate was thereafter issued by the competent authority on 02.05.2019. The respondent-allottee was offered possession of the unit in question on 03.05.2019. The respondent-allottee was called upon to remit balance payment including delayed payment charges and to complete the requisite formalities/documentation for handover of the unit in question to the respondent-allottee. Furthermore, the appellant, in order to avoid any' unwarranted controversy, proceeded to credit an amount of Rs.5,50,933/- to the account of the respondent-allottee as a gesture of goodwill. The said payment was made to the respondent-allottee in full and final settlement of his alleged claims or grievances or demands against the appellant and is clearly reflected in the statement of account correctly maintained by the respondent in its due course of business.

9. On the above said grounds, it was pleaded that the respondent-allottee is not entitled for any relief and, thus, prayed for dismissal of the complaint at the very threshold.

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

11. Initiating the arguments, Shri Shekhar Verma, Advocate, Ld. counsel for the appellant contended that in the present case the

possession of the unit in question has been offered by the Appellant to the respondent-allottee and, as such, he cannot claim any delayed period possession interest on the statutory dues/charges, which have been passed on the Statutory Authorities. He further contended that deposit of the aforesaid statutory dues with the Statutory Authorities cannot be questioned, inasmuch as, occupation certificate has been issued by the competent authority and the same is not issued unless government/statutory dues are paid. Further, the project is registered with HRERA, Gurugram vide Memo No.330 of 2017 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.

12. 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.

13. 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 the respondent-allottee and an offer of possession after obtaining the occupation certificate would satisfy the mandate of proviso to Section 18(1) of the Act.

14. He further contended that the time of delivery of possession was never the essence of the contract. He contended that there is no delay in offer of possession and the Ld. Authority has wrongly inferred that the time was the essence of the contract. He further contended that the respondent-allottee paid the sale consideration and other charges as per the plan which is construction linked. In fact, on record what had been agreed between parties was that only timely payment shall be the essence of the contract.

15. 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.

16. 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 2022 (1) R.C.R. (Civil) 357**, the Hon'ble Supreme Court had no occasion to deal with Section 31 in the context of Rules 28 & 29 of the Rules.

17. He further contended that the application of the provision of the Act is prospective and cannot be applied on the contract which were already executed much earlier than the enforcement of the Act or at best the provision of delayed possession interest can be applied from the date of enforcement of the Act.

18. He contended that the complaint was not maintainable as the offer of possession was issued on 03.05.2019 by the appellant and the complaint was filed on 10.06.2019. He also contended that in the complaint the respondent allottee has not taken the plea that the physical possession of the unit is not being handed over to him and has not sought delayed possession interest up to the handing over of the unit to him, despite the fact that the complaint was filed after the offer of possession.

19. He contended that the appellant has already compensated the respondent-allottee for the delay period amounting to Rs.5,50,933/- and an amount of Rs.1,65,791/- as Early Payment Rebate.

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20. 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.

21. Per contra, Ld. counsel for the respondent-allottee has defended the impugned order on the ground that the respondent - allottee had already paid a total amount of Rs.1,31,03,641/- at the time of offer of possession against the total sale consideration of 1,33,20,962/-. The offer of possession was delayed by 03 years, 03 months and 22 days and despite commitments that the delay compensation would be as per applicable provisions of RERA, the appellant credited only an amount of Rs.5,50,933/- to the respondent-allottee as delay compensation as per the agreement and not as per the applicable provisions of RERA. He further contended that though he has paid sufficient amount towards the total sale consideration and if the delay compensation as per RERA provisions is added then the total amount towards the said unit would be much more than the total sale consideration and despite this he has not been handed over the physical possession of the unit till date and the appellant is asking for more amount to be paid before the unit is physically handed over to the respondent-allottee.

22. He further contended that the appellant has deliberately not attached the e-mails exchanged between the parties, which were the part of the complaint. These e-mails show that the appellant has committed to pay the delayed period compensation as per HRERA

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provisions and the possession has still not handed over to the respondent-allottee. The respondent-allottee has submitted the e-mails attached with the complaint vide his e-mail dated April 12, 2022. The respondent-allottee has relied upon e-mails dated 09.5.2019, 28.03.2019, 05.06.2019, 10.05.2019 and 27.05.2019.

23. He contended that the appellant has not taken any plea in the grounds of appeal against the delayed period compensation by the Ld. Authority in the impugned order.

24. He contended that the plea in the complaint that physical possession is not being handed over to respondent-allottee will be clear from these e-mails exchanged between the parties.

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

26. 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 delayed possession interest for the delay in handing over the unit. 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."

27. 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.

28. 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.

29. 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

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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.”*

30. 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.

31. 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.

32. Similarly, the plea raised by learned counsel for the appellant that the application of the Act is prospective, has also no force as the operation of the Act is retroactive in nature. Reference can be made to the case titled **M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc.** (Supra) wherein the Hon Apex Court has held as under:-

“41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the

allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.”

“45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest.”

“53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the

applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016.”

33. The same legal position was laid down by the Division Bench of the Hon'ble Bombay High Court in **Neel Kamal Realtors Suburban Pvt. Ltd. & anr. Vs. Union of India and others 2018(1) RCR (Civil) 298 (DB)** wherein it was laid down as under: -

“122. We have already discussed that above stated provisions of the RERA are not **retrospective** in nature. **They may to some extent be having a retroactive or quasi retroactive effect** but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having **retrospective** or **retroactive** effect. A law can be even framed to affect subsisting/existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports. As regards Article 19(1)(g) it is settled principles that the right conferred by sub-clause (g) of Article 19 is expressed in general language and if there had been no qualifying provisions like clause (6) the right so conferred would have been an absolute one.”

34. As per the aforesaid ratio of law, the provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the Rules applicable to the acts or transactions, which were in the process of the completion though the contract/agreement might have taken place before the Act and the

Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

35. The contention of the appellant that no delayed possession interest is payable to the respondent-allottee as time was never the essence of the contract has no merit as the rights of the parties, in this case, are governed by the provisions of Section 18 of the Act which reads as under:-

“18. Return of amount and compensation.

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, —

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other

remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the

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agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.”

36. The proviso to Section 18(1)(b) of the Act categorically provides that where the allottee does not want to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed. The rights of the respondent-allottee stand crystallized to claim the delayed possession charges/interest the moment the appellant-promoter had failed to deliver the possession of the unit to the respondent-allottee within the period stipulated in the buyer's agreement dated 11.10.2012. The Act is a special act which has been enacted to safeguard the rights of the home buyers. It is settled proposition of law that the special statute overrides the general provision of the law. So, the plea raised by learned counsel for the appellant that the time was not the essence of the contract, has no application to determine the rights of the parties, which are to be adjudicated upon as per the express provisions of the Act. So, the respondent has certainly become entitled for delayed possession charges/interest.

37. The appellant has contended that the respondent-allottee has not taken any plea in the complaint that the appellant is not handing over the physical possession of the unit despite the fact that

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the complaint was filed after the issue of offer of possession. It is also contended that the offer of possession has been issued after obtaining Occupation Certificate (OC) from the competent Authority and, therefore, it is a valid offer. It was further contended that the respondent-allottee is not coming forward to take the possession though the offer of possession was issued on 03.05.2019 and, therefore, he is not entitled for delayed possession interest till handing over the possession. The respondent-allottee is not contending anything about the constructions of the unit. The question is not about the validity of the offer of possession with respect to defects in constructions of the unit in the present appeal. The validity of the offer of possession is to be examined whether the said offer of possession contains the valid demand of payment from the respondent-allottee. We have examined the offer of possession placed at page nos. 138 to 143 of the paper book. In the said offer of possession the respondent-allottee has been asked to make a payment as per Annexure 1 and to complete documentation to enable them for initiating the process of hand over of the unit to him. As per annexure 1 of the offer of possession a total amount of Rs.13,52,226/- (Rs.2,23,998/- to Emaar MGF Land Ltd., Rs.72,150/- to P G Condominium association and Rs.8,22,280/- for e-stamping, Rs.50,000/- Registration charges plus Rs.1,83,788/- to lien marked FD for HVAT liability) was payable by the respondent-allottee. In this Annexure, it is also mentioned that delayed compensation amounting

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to Rs.5,50,933/- has already been adjusted against the current demand. The appellant in its written statement before the Ld. Authority at Para No.13 of the preliminary objections has stated that the respondent-allottee was offered possession of the unit in question through the letter of offer of possession dated 03.05.2019 and the respondent-allottee was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit. Also in para no.14, it is mentioned that the respondent-allottee did not come forward to obtain possession as he didn't have adequate funds to remit the balance payments requisite for obtaining possession. It is clear that the respondent-allottee would not have been handed over the possession unless he had paid the demand of Rs.13,52,225/- made along with letter of possession dated 03.05.2019. It is an admitted fact that at the time of offer of possession and as per the statement of account of the appellant itself an amount of Rs.1,31,03,641/- already stood credited into the account of the respondent-allottee against the total sale consideration of Rs.1,33,20,962/-. There is a delay of 3 years, 3 months and 22 days in offering the possession of the unit. If the delayed possession interest @ 9.3% is added to the amount already paid by the respondent-allottee and even after deducting the delayed compensation already paid to him of Rs.5,50,933/-, then the total amount into the account of respondent-allottee will be much more

than the total sale consideration of the unit. The delayed possession interest was payable to the respondent-allottee as per section 18 of the Act. Thus, we are of the view that the demand of Rs.13,52,226/- raised by the appellant with the offer of possession was not correct was unjustified and unreasonable and, rather, much amount was payable by the appellant to respondent-allottee. As per e-mail dated 12.04.2018, it was intimated by the General Manager Customer Services of Emaar India Ltd. (of the appellant) to the respondent-allottee that the delay compensation for Tower 8, will be in accordance with RERA guidelines. Vide e-mail dated 05.06.2019 by the office of appellant, it was intimated that they will be liable to pay delay compensation as per the terms of the buyer's agreement of RERA applicable at the time of possession. Thus the offer of possession was not valid offer of possession. The appellant has also not raised any plea in the grounds of appeal regarding delayed possession period as allowed by the Ld. Authority in the impugned order. In view of the aforesaid discussions, we find nothing illegal in the order of the Ld. Authority in directing the appellant to pay interest at the prescribed rate i.e 9.3% per annum on the amount paid by the complainant from the due date of possession i.e. 11.01.2016 till the handing over of the possession.

38. No other point was argued before us by any of the parties.

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39. Thus, keeping in view our aforesaid discussion, the present appeal filed by appellant-promoter has no merit and the same is hereby dismissed. No order as to costs.

40. The amount deposited by the appellant-promoter i.e. Rs.58,53,696/- with this Tribunal to comply with the provisions of Section 43(5) of the Act be remitted to the learned Haryana Real Estate Regulatory Authority, Gurugram, along with interest accrued thereon for disbursement to the respondent-allottee, in accordance with law/rules and of course subjects to tax liability.

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

42. File be consigned to the record.

Announced:
May 11, 2022

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

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Emaar India Ltd.
Versus
Nishat Hasin Khan
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Present: Shri Shekhar Verma, Advocate,
Ld. counsel for the appellant.

None for the respondent.

Vide our separate detailed order of the even date, the appeal is dismissed and the amount deposited by the appellant-promoter i.e. Rs.58,53,696/- with this Tribunal to comply with the provisions of Section 43(5) of the Act be remitted to the learned Haryana Real Estate Regulatory Authority, Gurugram, along with interest accrued thereon for disbursement to the respondent-allottee, in accordance with law/rules and of course subjects to tax liability.

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)

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Manoj Rana