BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 85 of 2024

Date of Decision: September 01, 2026

Emaar India Limited (formerly known as Emaar MGF Land Limited), 306-308, 3rd Floor, Square One, C-2, District Centre, Saket, New Delhi-110017, Also at Emaar Business Park, MG Road, Sikanderpur Chowk, Sector-28, Gurugram-122002, Haryana through its Authorised Representative Manish Mahajan, aged about 35 years S/o Anil Kumar

Appellant.

Versus

1. Mayank Mehta
2. Megha Mehta

Both R/o : 73, Gautam Apartments, New Delhi-110049

Respondents

CORAM:

Justice Rajan Gupta **Chairman**
Dinesh Singh Chauhan **Member (Technical)**

Present: Ms. Ankita Chaudhary, Advocate for the appellant.

Mr. Mayank Mehta-respondent No. 1 in person.

O R D E R:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 31.05.2023 passed by the Adjudicating Officer, Haryana Real Estate Regulatory Authority, Gurugram, whereby the appellant-promoter has been directed to pay compensation amounting to Rs.5,00,000/-for loss of livelihood, mental harassment and agony and Rs.25,000/- as cost of litigation to the respondent-allottees within 30 days of the order. In case of failure, the

appellant-promoter was also liable to pay interest @ 10% per annum till realization.

2. The respondent-allottees were applicants in a commercial project, namely, 'Emerald Plaza' floated by the appellant-promoter in Sector 65, Gurugram. They were allotted a space therein for a total sale consideration of Rs.53,13,733/-. The respondent-allottees remitted an amount of Rs.53,25,701/-. Office Space buyer's agreement was executed between the parties on 07.08.2010. As per agreement, due date of possession was 07.06.2013. Occupation Certificate to the project was granted on 08.01.2018. Offer of possession was made to the respondent-allottees on 25.01.2018. Thereafter, they invoked jurisdiction of the Authority for grant of delay possession interest from due date of possession till actual offer of possession. Their claim was resisted by the appellant-promoter. The Authority adjudicated upon the matter and gave the following directions vide order dated 16.01.2019:

> *"**Decision and directions of the authority***
>
> *34. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:*
>
> *(i) The respondent is directed to pay the interest at the prescribed rate i.e. 10.75% for every month of delay from the due date of possession i.e. 07.06.2013 till the letter of offer of possession date 25.01.2018.*
>
> *(ii) The complainants are also advised to take possession and after possession, if they come to know*

any deficiencies they may approach the appropriate forum.

(iii) The respondent is directed to desist from charging holding charges for the period the matter remained sub-judice.

35. As the project is registerable and has not been registered by the promoter, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent under section 59 of the Act ibid. A copy of this order be endorsed to registration branch for further action in the matter.

36. The order is pronounced.

37. Case file be consigned to the registry."

3. Thereafter, the respondent-allottees filed a complaint before the Adjudicating Officer seeking refund of monthly maintenance charges; amount on account of HVAT; additional amount paid by them and compensation of Rs.15,00,000/-for loss of livelihood, mental harassment and agony etc. This claim was also resisted by the appellant-promoter. However, the Adjudicating Officer, vide impugned order dated 31.05.2023 came to the conclusion that the respondent-allottees were entitled to Rs.5,00,000/- for loss of livelihood, mental harassment and agony and Rs.25,000/- as cost of litigation.

4. The aforesaid order has been challenged before this Tribunal on the ground that since the allottees are persons, who stayed in the project and have possession in their favour, they are estopped from invoking jurisdiction of the Adjudicating Officer for claiming additional compensation.

5. Learned counsel for the appellant-promoter submitted that pursuant to order dated 16.01.2019 passed by the Authority, the respondent-allottees had already received an amount of Rs.17,00,000/- on account of delay possession charges.

6. The aforesaid fact has not been controverted by respondent No.1.

7. We have heard learned counsel for the appellant and respondent No. 1 in person and given careful thought to the facts of the case.

8. As per Section 18(1) of the Act[1], the matters, in which the project is not completed by the promoter within the stipulated period as per terms and conditions settled between the parties, the allottee has the option of withdrawing from the project and seek relief of refund of the paid-up amount along with interest. However, if the allottee chooses to remain in the project, then the only remedy provided for the default of the promoter in completion of the project, is to get delay possession interest on the paid-up amount from the due date of possession till actual delivery of possession. (*See- Appeal No. 70 of 2023-* ***Greater Noida Industrial Development Authority v. Ranjan Misra****, decided on 20.04.2023).*

9. In the present case, the allottees have already availed the remedy of delay possession charges. Keeping in view the facts and circumstances of the case coupled with Section 18(1) of the Act, since the allottees opted not to withdraw from

[1] Real Estate (Regulation and Development) Act, 2016

the project, they are not entitled for any additional compensation

10. In view of above, the appeal is allowed.

11. The amount of pre-deposit made by the appellant-promoter along with interest accrued thereon, be remitted to the Authority for disbursement to the appellant-promoter, subject to tax liability, if any.

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

13. File be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Dinesh Singh Chauhan
Member (Technical)

September01, 2026
mk