In the High Court of Punjab and Haryana, at Chandigarh

1. RERA Appeal No. 95 of 2021 (O&M)

Emaar India Limited (formerly known as Emaar MGF Land Limited)

... Appellant(s)

Versus

Kaushal Pal Singh alias Kushpal Singh

... Respondent(s)

2. RERA Appeal No. 97 of 2021 (O&M)

Emmar India Limited (formerly known as Emmar MGF Land Limited)

... Appellant(s)

Versus

Pushpa Gogia

... Respondent(s)

3. RERA Appeal No. 98 of 2021 (O&M)

Emaar India Limited (formerly known as Emaar MGF Land Limited)

... Appellant(s)

Versus

Karan Singh Chettri

... Respondent(s)

4. RERA Appeal No. 99 of 2021 (O&M)

Emaar India Limited (formerly known as Emaar MGF Land Limited)

... Appellant(s)

Versus

Jagdeep Kumar

... Respondent(s)

5. RERA Appeal No. 100 of 2021 (O&M)

Emaar India Limited (formerly known as Emaar MGF Land Limited)

... Appellant(s)

Versus

Akhil Mahajan and Another

... Respondent(s)

6. RERA Appeal No. 101 of 2021 (O&M)

Emaar India Limited (formerly known as Emaar MGF Land Limited)

... Appellant(s)

Versus

Ajay Singhal and Another

... Respondent(s)

7. RERA Appeal No. 102 of 2021 (O&M)

Emaar India Limited (formerly known as Emaar MGF Land Limited)

... Appellant(s)

Versus

Satyanand Shukla

... Respondent(s)

8. RERA Appeal No. 103 of 2021 (O&M)

Emaar India Limited (formerly known as Emaar MGF Land Limited)

... Appellant(s)

Versus

Nitin Kumar and Another

... Respondent(s)

9. **RERA Appeal No. 104 of 2021 (O&M)**

Emaar India Limited (formerly known as Emaar MGF Land Limited)

... Appellant(s)

Versus

Gulshan Kumar Gulati

... Respondent(s)

10. **RERA Appeal No. 105 of 2021 (O&M)**

Emaar India Limited (formerly known as Emaar MGF Land Limited)

... Appellant(s)

Versus

Dr. Sandhya Aggarwal

... Respondent(s)

11. **RERA Appeal No. 106 of 2021 (O&M)**

Emaar India Limited (formerly known as Emaar MGF Land Limited)

... Appellant(s)

Versus

Anjana Sharma

... Respondent(s)

AND

12. **RERA Appeal No. 107 of 2021 (O&M)**

Emaar India Limited (formerly known as Emaar MGF Land Limited)

... Appellant(s)

Versus

Sanjeev Walia and Another

... Respondent(s)

DATE OF DECISION: 23.05.2022
RESERVED ON: 06.05.2022

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Randeep Singh Rai, Senior Advocate
with Mr. Kunal Dawar and Ms. Rubina Virmani, Advocates
for the appellant(s).

Ms. Mehak Sawhney, Advocate
for the respondent (In RERA-APPL-95-2021).

Mr. Paul S. Saini, Advocate
for the respondent (In RERA-APPL-98-2021).

Mr. Niloptpal Shyam, Advocate
for the respondent No.1 (In RERA-APPL-100-2021 and RERA-APPL-103-2021).

Mr. Jagjit Singh Gill and Ms. Neelam Singh, Advocates
for the respondent (In RERA-APPL-104-2021).

Mr. Nipun Vashisht, Advocate
for the respondent No.1 (In RERA-APPL-105-2021).

Anil Kshetarpal, J.

1. The learned counsel representing the parties are *ad idem* that in these connected appeals, the issues involved are identical. In fact, the learned counsel representing the appellant company is common in all the appeals. Hence, this judgment shall dispose of all the appeals.

2. The learned senior counsel representing the appellant, upon realizing that most of the contentions already stand answered by the Supreme Court in the various judgments including ***Pioneer Urban Land and Infrastructure Ltd. Vs. Govindan Raghavan 2019(5) SCC 725***, ***NBCC (India) Vs. Shri Ram Trivedi 2021(5) SCC 273***, ***IREO Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna and others 2021(3) SCC 241***, ***Wing Commander Arifur Rahman Khan Vs. DLF Southern Homes Pvt. Ltd. 2020(16) SCC 512***, ***Imperia Structures Ltd. Vs. Anil Patni, 2020(10) SCC 783*** and ***Newtech Promoters and Developer Pvt. Ltd. Vs. State of Uttar Pradesh, 2021 SCC (online) SC 1044***, and restricted his arguments to the points, extracted as under:-

> *"1. Whether the statutory amount like H-VAT, GST, EDC etc., deposited by the home buyer with the developer, are liable to carry interest or not while ordering interest on delayed delivery of possession of the plot, apartment or constructed house??*
>
> *2. In case, as per the agreement, the home buyer was required to pay the amount in staggered manner, whether the amount of interest will be payable from the date of deposit or on the date agreed upon for the delivery of possession?"*

3. Some facts are taken from the lead case i.e. ***Emmar India Limited (formerly known as Emmar MGF Land Limited) v. Kaushal Pal Singh alias Kushpal Singh (RERA APPL-92-2021)***. It is a case of delay in delivery of possession by the promoter. The Real Estate Regulatory Authority (hereinafter referred to as "the RERA") has ordered the appellant to pay the interest at the prescribed rate i.e. 10.20% per annum for every month of delay, on the amount paid by the allottee (home buyer) from the due date of possession i.e. 17.11.2013 till the offer of possession i.e. 07.03.2019. The directions issued by the RERA are extracted as under:-

> *"i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.20% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 17.11.2013 till the offer of possession i.e. 07.03.2019. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.*
>
> *ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.*
>
> *iii. The respondent shall not charge anything from the*

complainant which is not part of the buyer's agreement.

iv. *Interest on the due payments from the complainant shall be charged at the prescribed rate @ 10.20% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges".*

4. The appeal filed by the appellant before the Haryana Real Estate Appellate Tribunal (hereinafter referred to as "the Tribunal") has been dismissed on 14.10.2021. This appeal has been preferred under Section 54 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the 2016 Act"), which came into force on 01.05.2017.

5. The respondent was allotted Unit No. PH3-15-0101, First Floor, Block 15, Palam Vihar, Sector 77, Gurugram vide provisional letter of allotment dated 26.08.2010 for a sum of ₹61,60,941/-. The buyer's agreement was signed on 17.10.2010 and as per the agreement, the date for delivery of possession was agreed to be 17.11.2013. In other words, the promoter was given 33 months for completion of the project. The agreement further provided for a grace period of three months. The occupation certificate has been issued by the Haryana State on 05.03.2019 and the letter of offer of possession was issued on 07.03.2019. Thus, there has been a delay of more than 5½ years.

6. Now coming straight to the point. The first issue is whether the statutory amount like H-VAT, GST, EDC etc. deposited by the home buyer with the developer would carry interest or not? The learned senior counsel representing the appellant contends that such amount is paid to the government and does not remain with the promoter. While reinforcing his argument, he contends that this is a statutory amount on which the promoter

has not derived any benefit. Consequently, he contends that the interest should not be awarded on the amount represented by H-VAT, GST, External Development Charges etc. Per contra, the learned counsel representing the respondent (home buyer) contends that the amount is payable as compensation for delay in delivery of the possession. Such interest is payable on the total amount paid by the allottee to the promoter. He further submits that the amount paid by the promoter to the government including H-VAT, GST, EDC etc. constitutes the price of the apartment. While answering to the second argument, the learned counsel contends that in this case, the RERA has directed to pay interest for every month of delay only till the handing over of the possession.

7. At this stage, it would be important to note the relevant statutory provisions. Sections 2(w), 2(za) and 18 of the 2016 Act are extracted as under:-

> *"2(w) "external development works" includes roads and road systems landscaping, water supply, sewerage and drainage systems, electricity supply transformer, sub-station, solid waste management and disposal or any other work which may have to be executed in the periphery of, or outside, a project for its benefit, as may be provided under the local laws;*
>
> *2(x) to (z) XXXX XXXX XXXX XXXX*
>
> *(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
>
> *Explanation.—For the purpose of this clause—*

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

2(b) to 17 XXXX XXXX XXXX XXXX

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

8. The learned counsel representing the appellant has also relied upon Section 2(g) of the Haryana Development and Regulation of Urban

Areas Act, 1975 (hereinafter referred to as “the 1975 Act”), which is extracted as under:-

> *“(g) "external development works" include sewerage, drainage, roads and electrical works which may have to be executed in the periphery of, or outside, a colony for the joint benefit of two or more colonies”.*

9. Section 3 of the 1975 Act would also be relevant and hence, the same is extracted as under:-

> *“**3. Application for licence**.- (1) Any owner desiring to convert his land into a colony, shall, unless exempted under Section 9, make an application, to the Director, for the grant of a licence to develop a colony in the prescribed form and pay for it such fee and conversion charges as may be prescribed.*
>
> *Provided that if the conversion charges have already been paid under the provisions of the punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (41 of 1963), no such charges shall be payable under this section.*
>
> *Provided further that the schedule of payment of fee and charges for various licence colonies shall be such, as may be specified by the Government by directions issued from time to time under section 9A of this Act.*
>
> *Provided further that owner may enter into an agreement jointly or severally with a developer for pooling of land for grant of licence.*

Provided further that for such colonies located in such land use zones of various notified development plans, where in the opinion of the Government, the licences are to be issued after invitation of bids or following an auction procedure in pursuance of the policy framed by the Government in this regard from time to time, such application shall be considered to be valid only if it is filed in response to a notice of the Director and fulfils the prescribed terms and conditions.

Provided further that for such colonies located in such land use zones of various notified development plans, where in the opinion of the Government, the licences are to be issued after invitation of bids or following an auction procedure in pursuance of the policy framed by the Government in this regard from time to time, such application shall be considered to be valid only if it is filed in response to a notice of the Director and fulfils the prescribed terms and conditions.

(1A) All such applications received in response to the notice issued by the Director against policy for auction of licences that are considered to be in order by the Director shall, in addition to the prescribed requirements, also be liable for payment of location premium, as determined through the bidding/auction process, in such manner and in such time frame as conveyed by the Director. The amount received against location premium shall be utilised for provision, maintenance and augmentation of external development works

and shall be recovered in addition to the prescribed rates of development charges received against external development works from a colonizer.

(2) On receipt of the application under sub-section (1), the Director shall, among other things, enquire into the following matters, namely:-

(a) title to the land;

(b) extent and situation of the land;

(c) capacity to develop a colony;

(d) the layout of a colony, in case application for a colony is proposed to be divided into plots;

[***]

(f) conformity of the development schemes of the colony land to those of the neighbouring areas.

(3) After the enquiry under sub-section (2), the Director, by an order in writing, shall -

(a) grant a licence in the prescribed form, after the applicant has furnished to the Director a bank guarantee equal to twenty-five per centum of the estimated cost of development works as certified by the Director and has undertaken -

(i) to enter into an agreement in the prescribed form for carrying out and completion of development works in accordance with the licence granted;

(ii) to pay proportionate development charges in the external development works as defined in clause(g) of section 2 are to be carried out by the government or my other local authority. The proportion in which and the time within which, such payment is to be made shall be determined by the Director;

(iii) the responsibility for the maintenance and upkeep of all roads, open spaces, public parks and public health services for a period of five years from the date of issue of the completion certificate unless earlier relieved of this responsibility and thereupon to transfer all such roads, open spaces, public parks and public health services free of cost to the Government or the local authority, as the case may be;

(iv) to construct at his own cost, or get constructed by any other institution or individual at its cost, schools, hospitals, community centres and other community buildings on the lands set apart for this purpose, within a period of five years from grant of licence or in the extended period as allowed by the Director and failing which

the land shall vest with the Government after such specified period, free of cost, in which case the Government shall be at liberty to transfer such land to any person or institution including a local authority, for the said purposes, on such terms and conditions, as it may deem fit:

Provided that in case the licensee, the purchaser or the person claiming through him fails to construct and use the site for the purpose it was meant for in the prescribed period and seeks extension, the Director may, if satisfied after making such enquiry, as he may consider necessary, extend the construction period for a maximum period of five years at a time, after recovery of such extension fees, as may be prescribed on per-acre per-annum basis.

Provided further that a show cause notice shall be issued and an opportunity of hearing shall be given before vesting the land in the Government.

Provided further that the applicant shall be exempted from the provisions of this clause where compliance of clause (iv-b) is sought by the Director.

Explanation. *- In all licences issued at any date prior to the 3rd April, 2013, no extension fees shall be leviable for any extended period of construction prior to the 3rd April, 2018;*

(iv-a) to pay proportionate cost of construction of such

percentage of sites of such school, hospital, community centre and other community buildings and at such rates as specified by the Director;

(iv-b) to hand-over the possession and transfer the ownership of such land, as demarcated and identified in the approved layout plan, in such form and manner, as may be specified by the Director and such land shall vest with the Government to achieve the objective of creation of community buildings, housing, commercial and other physical and social urban infrastructure, in such colonies where a condition to this effect is imposed by the Director, before grant of licence;

(v) to permit the Director or any other officer authorised by him to inspect the execution of the layout and the development works in the colony and to carry out all directions issued by him for ensuring due compliance of the execution of the layout and development works in accordance with the licence granted;

(vi) to fulfil such terms and conditions as may be specified by the Director at the time of grant of licence through bilateral agreement as may be prescribed:

Provided that the Director, having regard to the amenities which exist or are proposed to be provided in the locality, is of the opinion that it is not necessary or possible to provide one or *more such amenities, may exempt the licensee from providing such amenities either wholly or in part;*

> *(b) refuse to grant a licence, by mens of a speaking order, after affording the applicant an opportunity of being heard.*

(3A) Where, by virtue of any section of this Act, power to grant any licence or issue any notification, order, rule or direction is conferred, then that power shall include power exercisable in like manner and subject to terms and conditions, as may be prescribed, to add to, amend, vary, suspend, withdraw or rescind such licence or such notification, order, rule or direction or to de-licence.

(4) The license so granted shall be valid for a period of five years and shall be renewable from time to time for such period, as may be prescribed not exceeding five years at a time and on payment of such fee, as may be prescribed

(5) Each colony may comprise of one or more licenses with contiguous land pockets.

(6) After the colonizer has laid out the colony in accordance with the approved layout plan and executed the internal development works in accordance with the approved design and specifications, he may apply to the Director for grant of completion or part-completion certificate.

The Director may enquire into such matters, as he deems necessary before granting such certificate.

(7) After enquiry under sub-section (6), the Director may, by an order in writing, grant completion or part-completion certificate on such terms and conditions and after recovery of infrastructure augmentation charges, as may be prescribed:

Provided that where in the agreement executed to set up a colony, a condition was incorporated for deposit of surplus amount beyond maximum net profit @ 15% of the total project cost and the colonizer has not taken the completion certificate of the said project, then notwithstanding the said condition in the agreement, the colonizer shall have the option either to deposit the infrastructure augmentation charges as applicable from time to time at any stage before the grant of such completion certificate and get the exemption of the restriction of net profit beyond 15% or deposit the amount as per the terms of the agreement.".

10. On a careful reading of the proviso to Section 18(1) of the 2016 Act, it is evident that an allottee who does not intend to withdraw from the project, is entitled to be paid by the promoter the interest for every month of delay till the delivery of possession at such rate as may be prescribed. It is in the nature of damages or compensation for delay in delivery of the possession of the apartment/unit. Such interest for every month of delay is

payable on the entire amount paid by the allottee. The interest has been defined in Section 2(za) of the 2016 Act. Explanation(i) of Section 2(Aa) of the 2016 Act provides that in case of default, the interest is payable by the promoter to the allottee at the rate equal to the rate of interest as shall be prescribed in this behalf. Explanation (ii) Section 2(Za) of the 2016 Act provides that the interest shall be payable to the allottee from the date the promoter received the amount or any part thereof. The proviso to Section 18(1) of the 2016 Act clearly enables the authority to compensate the allottee for the losses suffered on account of delay in delivery of possession by the promoter. The interest shall be payable on the complete amount paid by the allottee to the promoter. The learned counsel representing the appellant has failed to draw the attention of the Court towards any statutory provision prohibiting the payment of interest on the amount of H-VAT, GST, EDC etc. under proviso to Clause (1) of Section 18 of the 2016 Act to the allottee. Section 2(g) of the 1975 Act defines the external development works. Section 3(3)(a)(ii) of the 1975 Act provides that the owner who wants to develop his land into a colony is liable to pay the proportionate development charges. In other words, the liability to pay the amount is on the licensee (owner-promoter).

11. Moreover, the Tribunal has correctly observed that this plea was never taken by the appellant either in reply to the complaint or in the grounds of appeal before the Tribunal. Furthermore, no material has been placed to show as to when and how the demand of external development charges was raised by the government and how much development charges were actually deposited by the promoter. It has been contended by the

learned counsel representing the respondent that GST was enforced w.e.f. 01.07.2017 whereas the date of delivery of possession was 17.11.2017. He submits that GST amount may have been paid by the promoter on account of the delay. In the considered view of this Court, on parity of reasons as has been noticed while deciding the issue of deposit of the external development charges, the interest shall be payable on the entire amount paid by the allottee.

12. The next argument of the learned counsel representing the appellant does not arise in the present case. In these cases, the allottee has not withdrawn from the project. He has made a limited prayer of grant of interest in accordance with Proviso to Section 18(1) of the 2016 Act. Section 18 specifically provides that the interest for every month of delay is payable from the agreed date of delivery of possession (in the present case from 17.11.2013 till 07.03.2019, the date when the possession was delivered). As already noticed, the RERA has ordered payment of interest in consonance with the proviso to Section 18 (1) of the 2016 Act.

13. Keeping in view the aforesaid facts, there is no ground to interfere in exercise of jurisdiction under Section 58 of the 2016 Act. Consequently, all the appeals are dismissed.

14. The miscellaneous application(s) pending, if any, in all the appeals shall stand disposed of.

(Anil Kshetarpal)
Judge

May 23, 2022
"DK"

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No