

BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA
REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint No.2841 of 2023
Date of Decision: 13.01.2025

1. Mr. Ajay Singh S/o Sh. Vijay Pal Singh, R/o 18/16, Indira Nagar, Lucknow-226016, Uttar Pradesh.
2. Ms. Chetna Singh W/o Mr. Ajay Singh S/o Sh. Vijay Pal Singh, R/o 18/16, Indira Nagar, Lucknow-226016, Uttar Pradesh.

Complainants

Versus

M/s. Emaar India Ltd. (Formerly known as M/s.Emaar MGF Land Limited) Emaar MGF Business Park, MG Road, Sikanderpur Chowk, Sector-28, Gurugram-122001

Respondent

APPEARANCE

For Complainants: Mr. Kuldeep Kumar Kohli, Advocate
For Respondent Mr. Ishaan Dang, Advocate

ORDER

1. This is a complaint, filed by Mr. Ajay Singh and Mrs. Chetna Singh (allottees) under section 18 (3) and section 19 of the Real Estate (Regulation and Development), Act 2016 (in brief the Act) read with rules of the Haryana Real Estate (Regulation and Development)

(Amendment), Rules 2019, against M/s. Emaar MGF Land Limited (promoter).

2. According to complainants, the respondent is a Company incorporated under the Companies Act, 1956. It claims to be one of the leading Real Estate Company. The respondent is engaged in the construction and development of the real estate project under the name and style of "**Emerald Estate**" at sector 65, Gurugram, Haryana (hereinafter referred to as the "Project"), same is a promoter, within the meaning of section 2 (zk) of the Act of 2016.

3. That aforesaid project of the respondent is registered with the Haryana Real Estate Regulatory Authority. Hence, this complaint is amenable to the territorial jurisdiction of this Authority. The delayed compensation for the consideration paid by the complainants, for the unlawful loss and mental agony, falls within the pecuniary jurisdiction of this forum.

4. That the respondent is in violation of Section 11 (4) (a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of this Act or the Rules and Regulations made thereunder to the allottee as per the agreement for sale executed

inter-se. The Respondent company has resorted to unfair practices by way of making incorrect, false and misleading statements over the possession and thereby violated provisions of Section 12 of The Act.

5. That Respondent has failed to provide the requisite facilities, amenities and services as agreed at the time of booking and has violated the provision of Section 12 of The Act.

6. That the Respondent by using its dominant position is dictating its unreasonable demands to the Complainants without showcasing any proficient progress.

7. That as per Section 11 (4) (f) and Section 17 (1) of the Act, the Respondent is under an obligation to execute a conveyance deed in favor of the Complainants within 3 months of the receipt of occupancy certificate.

8. That the respondent has substantially failed to discharge its obligations imposed upon it under the Act of 2016 and rules and regulations made thereunder.

9. That from Section 71 of the Act of 2016, it is clear that an adjudicating officer is empowered to adjudge compensation under Section 12, 14, 18 & 19 of the Act.

10. That As per Section 18(3)^{of act,} if the promoter fails to discharge any other obligation 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.

11. That they (complainants) and their immediate family members have been passing through mental and physical agony as well as emotional trauma. They (complainants) have been making the rounds/communications/personal visits to the office of the respondent because of the delay and uncertainty in providing the delivery of the unit. It has been held by this Hon'ble Court that to deprive a person from his right apparently causes mental agony to the complainants and the mental agony enhances with the period of delay in delivery of the property and it further causes anxiety, pain and mental agony if in spite of the orders of the Hon'ble Haryana Real Estate Regulatory Authority, Gurugram, the possession is not given resulting in the complainants filing applications for execution as well as for compensation. They (complainants) have suffered so much of mental illness because of the irresponsible behaviour of the respondent. (There is an old proverb "*ubi jus ibi remedium*" meaning where there is right, there is a remedy). They are entitled to be paid a sum of Rs.5 lacs for mental agony, physical torture and pain and in

result, suffering of the family who are directly impacted by such behaviour of the respondent.

12. That it is evident from the record that they (complainants) are being represented by a Law firm, and have incurred an expense of Rs.3 lacs in pursuing the matter initially before the Hon'ble Real Estate Regulatory Authority, Gurugram and subsequently for filing the petition for execution and now the compensation before Hon'ble A.O. A receipt of the lawyer towards the payment of the fee for the above three matters amounting to Rs.3 lacs is annexed herewith as Annexure C-2.

13. That they (complainants) have suffered a huge loss by not getting the property that they had booked with the respondent. The complainants invested their hard-earned money to buy a flat for the benefit of their family and children and to provide them a good status of living but unfortunately because of the inordinate delay of the respondent, they (complainants) did not get their dream home. In case, they (complainants) would have got this property on time, not only would they had enjoyed the property with their family but the property would have also reasonably appreciated, as is evident from the different properties of similar size, located similarly in the same area.

14. Stating all this, the complainants have prayed for compensation due to rental loss in the said property Rs.25,64,352/- and mental agony.

15. The respondent contested claim of complainants by filing a written reply. It is averred that the dispute raised in the present complaint is beyond the purview of this forum and can be adjudicated by the Civil Courts. The complainants are wilful and persistent defaulters, who have failed to make payment of the sale consideration, as per the payment plan opted by them (complainants).

16. That the complainants had approached the respondent through a property dealer and expressed their interest in booking an apartment in the residential group housing project developed by it (respondent) known as "Emerald Estate Apartments", Emerald Estate at Emerald Hills, situated in Sector 65, Gurugram. Prior to making the booking, they (complainants) conducted extensive and independent enquiries with regard to the project and then they got booked apartment. They were provisionally allotted apartment No. EEA-H-F09-06 located on the 9th floor, Block H, admeasuring 1310 sq. ft approx. super area.

17. That buyer's agreement (BBA) was executed on 18.01.2020. The complainants started defaulting in making payment of instalments. It

(respondent) has duly offered possession of the unit on 26.11.2020 within the period of validity of registration of the Act. Nevertheless, it (respondent) has credited delay compensation amounting to Rs. 9,83,684/- at the time of offer of possession. It has also credited Early Payment Rebated (EPR) amounting to Rs. 6,040/- and an amount of Rs. 28,557/- on account of Anti-Profiting.

18. That it (respondent) preferred an appeal against order dated 01.10.2021, before the Hon'ble Appellate Tribunal, which was partly allowed vide order dated 28.04.2023. The Appellate Tribunal held the due date of possession to be 26.02.2014 and not 26.08.2013. The Hon'ble Appellate Tribunal further held interest on amounts paid by the complainants before the due date of delivery of possession i.e. 26.02.2014, shall be payable from 26.02.2014 and payments made after 26.02.2014, interest shall be payable from the date on which respective payments were made by the complainants to the respondent. The Hon'ble Appellate Tribunal further directed that the amount of Rs. 33,21,682/- deposited by the respondent before the Hon'ble Appellate Tribunal shall be sent for disbursement to the complainants.

19. That in execution proceedings filed by them (complainants) Hon'ble Executing Court was pleased to order disbursement of an

amount of Rs. 20,57,694/- to them (complainants). They (complainants) took possession of the unit on 13.06.2023. The present complaint has been filed seeking compensation on the basis of order dated 01.10.2021, whereby Hon'ble Authority has already granted interest for delayed possession to the complainants.

20. That the complainants cannot claim compensation when they (complainants) are seeking possession of the unit. They (complainants) can only claim interest for delay, if any, in offering possession.

21. That in view of above circumstances, the complainants do not deserve any relief whatsoever. The respondent has prayed that the complaint may be dismissed, in the interest of justice.

22. Both of the parties filed affidavits in support of their claims.

23. I have heard learned counsels for both of the parties and perused the record.

24. Brief facts of the case as culled from pleadings of the parties, affidavits filed by them and also hearing learned counsels are as under:-

25. Present complainants were allotted a unit by the respondent in its project "**Emerald Estate**" at sector 65, Gurugram. As per clause 11 of Buyer's Agreement, the time period for delivery of possession was

36 months along with grace period of six months from the date of execution of Buyer's Agreement. The respondent failed to deliver possession in agreed time, which constrained present complainants to file a complaint No. 905/2019 before the Authority seeking certain reliefs. Said complaint was allowed and the Authority through order dated 01.10.2021, directed respondent to pay interest at the prescribed rate of 9.30% per annum for every month of delay on the amount paid by the complainants from the due date of possession i.e. 26.08.2013 till 26.01.2021 i.e. after expiry of two months from the date of offer of possession (26.11.2020). An amount of Rs. 9,83,684/- (as per statement of account dated 26.11.2020) paid by the respondent to the complainants towards compensation for delay in handing over possession was to be adjusted towards the amount of DPC. The authority did not allow plea of grace period of six months.

26. Aggrieved by the said order, the respondent preferred an appeal, which was dismissed by the Appellate Tribunal vide order dated 28.04.2023.

27. Learned counsel for respondent contended vehemently that when relief of DPC has already been allowed by the Authority and appeal filed against said order has also been dismissed making the

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order of Authority as final, the complainants cannot claim compensation now.

28. Admittedly, respondent failed to deliver possession in agreed time. I find weight in the contentions of learned counsel for JD claiming that when for delay in handing over possession, his client i.e. JD has already been burdened to pay delayed possession compensation (DPC), same is not liable to pay further compensation on same count.

29. A perusal of order passed by the Authority makes it clear that the complainants have been allowed delayed possession compensation from the due date of possession i.e. 26.08.2013 till 26.01.2021 i.e. expiry of the two months from the date of offer of possession (26.11.2020). The respondent is stated to have issued letter offering possession on 26.11.2020. The Authority granted two months' time observing that in the interest of natural justice, the complainants should be given two months' time from the date of offer of possession, as even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to the inspection of completely finished unit but this was subject that unit to be handed over at that time may not be in

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habitable condition. All this implies that the Authority was not sure that unit in question was worth occupying.

30. According to learned counsel for complainants, even if aforesaid letter offering possession was issued by JD, the unit in question was not worth occupying. Moreover, the JD had imposed condition of payment of amount, which was not outstanding against his client. Further, the JD had asked his clients i.e. allottees/DHs to execute an undertaking, which was illegal.

31. A copy of said letter i.e. 26.11.2020 has been put on file. Apparently, the JD asked the allottees/DHs to pay certain amount, before taking possession and also to execute an undertaking. It is observed by the Appellate Tribunal that allottees had already paid an amount of Rs. 62,35,205/- which was more than total sale consideration of Rs. 56,18,939/-. It was not legal for the JD to impose a condition of payment of certain amount and also to execute an undertaking as a condition for handing over possession. In such a circumstance, if allottees/DHs did not take possession, same cannot be blamed. Perhaps taking consideration of that, the Appellate Tribunal observed that respondents/allottees have not given actual physical possession of the unit. The Appellate Tribunal directed that in case respondents/allottees do not pay

compensation within one month of the order, then same has to pay cost of Rs.2000/- per day, to the respondents-allottees from the date of order, till actual handing over possession of the unit.

32. It is not plea of the respondent even that same has paid cost in compliance of order of the Appellate Tribunal. When the Appellate Tribunal has already allowed a cost of Rs.2000/- per day to be paid to present complainants by the promoter/respondent till actual handing over of possession, in my opinion, this amount is enough to compensate the complainants for having been deprived of the possession and there is no need to allow further compensation in the name of as rental loss.

33. Similarly, when the Appellate Tribunal had already allowed Rs.2000/- per day as cost till actual handing over of possession, proper procedure for present complainants was to insist on payment of said amount during earlier execution proceedings. There was no need to file execution petition again i.e. petition in hands. It is well settled that order of Trial Court is replaced by the order passed by the Appellate Court/Tribunal. Even then it was merely irregularity and present petition is not liable to be dismissed on this reason.

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34. Apart from compensation for rental loss, the complainants have prayed for compensation of Rs. 5.00 lacs for mental agony, physical torture, pain & suffering and Rs. 3.00 lacs as cost of litigation. Admittedly, possession was not handed over to the complainants in agreed time. The allottees have paid not entire sale consideration but more than that but were not been given possession of unit ^{in agreed time ✓}. Apparently, all this caused harassment, mental agony and suffering in the mind of the allottees. The respondent used money paid by the allottees and received undue gains. From all this, the allottees are well within their right to claim compensation. A sum of Rs. 2.00 lacs is allowed to the complainants for mental agony, pain and suffering. Rs. 3.00 lacs as litigation expenses appear to be excessive, the complainants are allowed a sum of Rs. 50,000/- as cost of litigation to be paid by the respondent.

35. The respondent is bound to pay Rs. 2000/- per day till the day, actual possession is handed over to allottees, in continuation of order of Appellate Tribunal, referred above and ^{same is ✓} again directed to pay aforesaid amount of Rs. 2,50,000/- along with interest at the rate of 10.50% per annum, till realization of amount.

Announced in open court. ^{to day i.e. 13-1-2025.}

File be consigned to record room.



(Rajender Kumar)

Adjudicating Officer

Haryana Real Estate Regulatory Authority,

Gurugram. 13.01.2025

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