

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

**Complaint No.218 of 2024
Date of Decision: 11.07.2025**

Apoorv Gupta r/o B-127, SunCity, Sector-54, Gurugram, Haryana-
12202

Complainant.

Versus

M/s. Emaar India Ltd. Office address: Emaar Business Park, M.G.
Road, Sikanderpur Chowk, Sector-28, Gurugram, Haryana-122002.

Respondent

APPEARANCE

For Complainants:	Complainant in person.
For Respondent	Mr. Dhruv Rohatgi, Advocate.

ORDER

This is a complaint filed by Apoorv Gupta (allottee) under section 31 read with section 71 against M/s Emaar India Limited (promoter).

2. According to complainant, the respondent is a company incorporated under The Companies Act 1956 and is engaged in the construction and development of the real estate

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project, namely Emerald Hills Floors, Sector 65, Gurugram. Same (respondent) is thus a promoter, within the meaning of section 2 (zk) of the Act of 2016.

3. The facts of the complainant's case as culled out from the complaint are that the complainant booked a floor in the aforesaid project of respondent on 15.06.2009 by paying booking amount of Rs. 5,00,000/-. The respondent allotted unit bearing No. EHF-350-CFF-046, in the said project vide provisional allotment letter dated 27.07.2009. A letter from respondent dated 28.07.2009 mentioned that the buyer's agreement would be executed in a month's time (before 28.08.2009). However, the buyer's agreement was executed on 08.11.2010. As per said buyer's agreement, the respondent proposed to hand over possession of the subject unit within 30 months from the date of execution of the buyer's agreement (including 3 months grace period). However, the respondent offered possession of the subject floor vide letter dated 31.10.2018. In this way, the respondent failed to hand over possession as per the commitment in the buyer's agreement and there occurred a delay of 5 years 7 months and 25 days by the builder in handing over possession of the property.

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4. That due to delay in handing over possession of subject unit, he (complainant) suffered loss of rental income and mental agony.

5. He (complainant) filed a complaint No. 3407/2020, seeking DPC etc which was allowed by the Authority vide order dated 22.07.2021. The respondent has been directed to pay interest @ 9.30% per annum on amount paid by him from due date of possession i.e. 08.02.2013 till 03.10.2018.

6. That he (complainant) made several requests, but the respondent did not pay even single penny, as per the order of the HARERA, Gurugram.

7. Contending all this, the complainant has sought the following compensation: -

- i. Directing the respondent for compensation for loss of rental income.
- ii. Directing the respondent for compensation for mental agony caused by the delay.

8. The respondent contested claim of complainant by filing a written reply. It is averred that the complainant is estopped by his own act, conduct and omission etc. from filing the present complaint.

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9. That the complainant has been offered possession of subject unit on 03.08.2018 and the unit was handed over on 31.10.2018. Thereafter a conveyance deed was executed on 28.11.2018. The lack of bonafide of the complainant is apparent. After the pronouncement of the judgment dated 22.07.2021 in the complaint no. 3407 of 2020, the complainant was awarded delay compensation, the complainant chose to remain silent for such a long period and has approached this authority to extort money after a delay of more than 3 years.

10. Thus, present complaint is barred by limitation. Moreover, it needs to be highlighted that the respondent has already credited a sum of Rs. 33,64,847/- as early payment rebate and a sum of Rs. 1,64,585/- on account of anti-profiting.

11. That the Authority while deciding complaint bearing No.3407 of 2020, granted delay possession charges vide order dated 22.07.2021 in favour of complainant, which is in the nature of compensation itself.

12. That in view of the facts stated above, the complainant does not deserve to get any compensation as prayed and the complaint is liable to be dismissed with costs.

13. Both parties filed affidavits in support of their claims.

14. I have heard complainant in person and learned counsel appearing on behalf of respondent and perused the record on file.

15. Admittedly, complaint No. 3407/2020 filed by present complainant seeking delay possession compensation has already been allowed by the Authority vide order dated 22.07.2021. Complainant has been allowed interest at rate 9.30% per annum for every month of delay on the amount paid by him from due date of possession i.e. 08.02.2013 till 03.10.2018 i.e. expiry of two months from the date of offer of possession. I find weight in the plea of respondent claiming that award of interest was in the form of compensation.

16. As per Section 18 (1) of Act of 2016, if promoter fails to complete or 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, (b)-----, 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 or 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.

17. It is worth mentioning here that complainant did not wish to withdraw from the project but prayed for delayed possession compensation, by filing a complaint with the Authority. The said complaint has already been allowed. Proviso added to sub section (1) of section 18 provides 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 handing over of possession, at such rate as may be prescribed. Rule 15 (1) of The Haryana Real Estate (Regulation and Development) Rules 2017 makes it clear that for the purpose of proviso to section 12, section 18 and sub section 4 and sub section 7 of section 19 "interest at the rate prescribed" shall be the State Bank of India higher than marginal cost of landing rate plus 2%. Thus, the provision of interest is in the form of compensation to the buyer when the promoter fails to complete the project in agreed time. The parliament did not intend to provide compensation separately as in case of refund of the amount described above.

18. When complainant has already been allowed delayed possession compensation by the Authority for same cause of

action, there is no reason to allow separate compensation for the delay in completion of construction by the promoter. Complaint in hands is thus dismissed.

19. File be consigned to record room.

Announced in open court today i.e. on 11.07.2025.

(Rajender Kumar)
Adjudicating Officer, Haryana
Real Estate Regulatory
Authority, Gurugram.