

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

Complaint no. : 2809 of 2023
Date of order : 14.07.2025

1. Sanjeev Walia,
 2. Samriti Walia,
- Both R/o Wood Duck, Middletown 19709,
Delaware.

Complainants

Versus

M/s Emaar India Ltd. (formerly known as
Emaar MGF Land Ltd.)
Registered Office At: 306-308, Square One,
C-2, District Centre, Saket New Delhi South,
Delhi DL 110017 IN.

Respondent

APPEARANCE:

For Complainants:

Mr. Kuldeep Kumar Kohli, Advocate.

For Respondent:

Mr. Ishaan Dang, Advocate.

ORDER

This is a complaint filed by Mr. Sanjeev Walia and Ms.
Samriti Waia (allottees) under section 31 of The Real Estate
(Regulation and Development) Act, 2016 (in brief The Act of 2016)

read with Rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 for violation of sections 12, 14, 18 & 19 of the Real Estate (Regulations and Development) Act, 2016 read with Rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017, against M/s Emaar India Ltd. (formerly known as Emaar MGF Land Ltd.), (promoter/ developer).

2. As per the complainants, they booked a unit No. EFP-III-41-0202 having super area 1975.00 sq. ft. at EMERALD FLOORS PREMIER III" Emerald Estates, Sector 65, Gurugram for a total sale consideration of Rs. 1,37,87,563/-.

3. As per clause 11 (a) of the buyer's agreement (BBA), the possession was to be handed over within a period of 24 months from the date of execution of BBA i.e. 17.05.2012 plus grace period of 3 months for applying and obtaining the CC/OC in respect of the unit and/or the project, which comes out to be 17.08.2014.

4. That they (complainants) paid a total sum of Rs. 1,23,63,750/- i.e. 90% of total sale consideration of Rs.1,37,87,563/- towards the said unit from 14.09.2011 till 02.05.2018, as per demand raised by the respondent.


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5. That despite payment stated above, the respondent failed to hand over possession in agreed period. Being aggrieved by said act of the respondent, they (complainants) filed a complaint before the Haryana Real Estate Regulatory Authority, Gurugram bearing complaint No. RERA-GRG-2146-2018, which was disposed of vide judgment/order dated 28.01.2020. The Authority by said order directed to respondent to pay interest at the prescribed rate i.e. 10.20% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 17.08.2014 till the offer of possession. The arrears of such interest accrued so far are paid to the complainants within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of each subsequent month. The complainants are also directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement. Interest on the due payments from the complainants shall be charged at the prescribed rate @ 10.20% by the promoter which is the same as is being granted to the complainants in case of delayed possession charge.

6. That the possession of the unit was to be given on 17.04.2012, whereas it has not been offered yet.
7. That the complainant has suffered the losses on account of the delay in obtaining the occupation certificate and not handing over the possession till date and hence that total delay till as on date has been 105 months till 31.02.2023.
8. Citing facts as described above, the complainants have sought following reliefs:-
 - i. That the complainant had to start his own business being a retired person to make his both ends meet with an investment of Rs. 1,00,00,000/-. Presuming that the complainant would have made a profit of 15% per annum month on his investment, he has suffered a loss of Rs. 15,00,000/- per annum or Rs. 1,25,000/- per month.
 - ii. Even if presuming the shop would have been put on rent, if the possession was given on time, the ongoing rent in the buildings around the complex is Rs. 30.00 per sq. ft and the complainant has suffered a loss of Rs. 58,500/- per month x 105 months = Rs. 61,42,500/-.
 - iii. To direct the respondent to pay Rs. 5,00,000/- to complainant for mental harassment and agony faced by the complainant on account of illegally cancelling the unit while the adjudication against the unit was pending.
 - iv) To direct the respondent to award the legal expenses for the resent complaint Rs. 3,00,000/- to the complainant.
 - v) That the complainant may be compensated for a sum of Rs. 10,00,000/- in view of decision of Civil Appeal No. 6303 of 2019 pronounced by Hon'ble Supreme Court of India vide order dated 24.08.2020.
 - vi That the respondent may be directed to pay the said amounts along with interest @ 9.50% per annum from the date of this order till realization of amount.

- vi) To impose penalty upon the respondent as per the provisions of section 61 of the Act for contravention of Section 12, 13, 14 & 16 of the Act.
9. Respondent contested the complaint by filling written reply. It is averred by the respondent that it has already delivered possession of the unit booked by the complainants on 28.10.2021, in accordance with the Buyer's Agreement dated 17.05.2012. Conveyance deed has also been registered in favour of the complainants on 02.12.2021. It (respondent) has duly fulfilled its obligations under the Buyer's Agreement as well as RERA.
10. The respondent denied to be in violation of Section 11 (4) (a), or any other provision of RERA. According to it, same (respondent) has duly fulfilled its obligations under RERA as well as under the Buyer's Agreement, executed between the parties.
11. It is further denied by the respondent that it has failed to provide the requisite facilities, amenities or services as agreed at the time of booking.
12. That in view of above circumstances, the complainants do not deserve any relief whatsoever.
13. Contending all this, the respondent prayed that the complaint may be dismissed, in the interest of justice.
14. Both of parties filed affidavits in support of their claims.

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15. I have heard learned counsels for both of the parties and perused the record.
16. Admittedly, complaint No. RERA-GRG-2146-2018 filed by present complainants seeking delay possession compensation has already been allowed by the Authority vide order dated 28.01.2020. Complainants have been allowed interest at rate 10.20% per annum for every month of delay on the amount paid by them from due date of possession i.e. 17.08.2014 till the offer of possession. I find weight in the plea of respondent claiming that award of interest was in the form of compensation.
17. 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.**

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18. 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.

19. 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.

20. File be consigned to record room.

Announced in open court today i.e. on 14.07.2025.



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