

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

Complaint No.3030 of 2023  
Date of Decision: 26.05.2025

Commander Narender Kumar, Unit No. EFP 29-0302, Emerald  
Floors Premier, Golf Course Extension Road, Sector-65,  
Gurugram-122018.

Complainant

Versus

M/s. Emaar India Ltd. Emaar MGF Business Park, MG Road,  
Sikanderpur Chowk, Sector-28, Gurugram-122002

Respondent

#### APPEARANCE

For Complainant:  
For Respondent

Mr. Kuldeep Kumar Kohli, Advocate  
Mr. Dhruv Rohatgi, Advocate

#### ORDER

1. This is a complaint filed by Commander Narender Kumar (allottee) under section 18 (3) and 19 of The Real Estate (Regulation and Development) Act, 2016 (in brief The Act of 2016) read with Rules of The Haryana Real Estate (Regulation and Development) (Amendment) Rules, 2019 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 project under the name and style of "Emerald Floors Premier", at Emerald Estate at Sector 65, Gurugram, Haryana (hereinafter referred to as the "Project"). Respondent is thus 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 construction paid by the complainant, for the unlawful loss and mental agony, falls within the pecuniary jurisdiction of this forum.

4. The facts of the complainant's case as culled out from the arguments of parties are that the complainant was allotted a unit i.e. EFP-29-0302 3<sup>rd</sup> floor of respondent in latest project namely "Emerald Floors Premier", at Emerald Estate at Sector 65, Gurugram, for a sale consideration of Rs.71,86,732/-. The builder buyer agreement was executed between the parties, according to which respondent was obliged to deliver possession within 36 months from the date of execution of agreement which was



executed on 18.01.2010 plus grace period of 3 months for applying and obtaining CC/OC. In this way, due date came to be 18.04.2013. The respondent failed to hand over possession till this date. The complainant has prayed for compensation on following grounds: -

- i. 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.
- ii. That 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 Real Estate (Regulation and Development) Act, 2016.
- iii. That the 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 Real Estate (Regulation and Development) Act, 2016.

  
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iv. That the respondent by using its dominant position is dictating its unreasonable demands to the complainant without showcasing any proficient progress.

v. That the respondent had substantially failed to discharge its obligations imposed them under the Real Estate (Regulation and Development) Act, 2016 and rules and regulations made thereunder.

5. Contending all this, the complainant prayed for a compensation of Rs.5,00,000/- for mental agony, physical torture and pain resulting to him and his family members by behaviour of respondent. The complainant further prayed for a sum of Rs.3,00,000/- as compensation to pursue the case before the Authority as well as before the Adjudicating Officer.

6. The respondent contested claim of complainant by filing a written reply. It is claimed that present complaint is not maintainable being barred by provisions of Order 23 Rule 1 of the Code of Civil Procedure, 1908, the complainant having abandoned his claim.

7. The respondent denied that it is in violation of section 11 (4) of the Act of 2016. According to it, the complainant has failed to substantiate even a single violation, rather it (the



respondent) has already addressed all concerns of the complainant and handed over the possession of the unit to the complainant, for which even the Conveyance Deed has also been executed.

8. It is also denied by the respondent that it has resorted to any unfair practices or made any incorrect, false or misleading statements over the possession or that same has failed to provide any requisite facilities, amenities or services. The complainant has failed to point out even a single such facility, amenity or service. In the absence of any specific such facility, amenity or service, the respondent is unable to justify the same and rather, it implies that the complainant is making vague and bald allegations, without there being any truth.

9. The respondent denied further that same used any dominant position or dictated any unreasonable demands. According to it, the complainant has raised vague, baseless and unsubstantiated allegations, which are not specific.

10. The respondent alleged that complainant defaulted in timely remittance of instalments to the respondent and the same is duly reflected in the statement of account correctly maintained by respondent in due course of its business. The complainant has



failed to prove any loss or injury, which is a sine-qua-non for grant of compensation.

11. Contending all this, the respondent prayed to: -

- a) Dismiss the complaint with punitive costs; and/or
- b) Any other relief in favour of the respondent and against the complainant.

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

13. I have heard learned counsels appearing on behalf of both of parties and perused the record on file.

14. Admittedly, citing delay in handing over possession of subject unit, complainant sought delay possession compensation from the Authority by filing a complaint no. 1729 of 2018. Said complaint has been allowed by the Authority vide order dated 21.01.2020. The Authority directed 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 complainant from due date of possession i.e. 18.04.2013 till the offer of possession.

15. It is vehemently argued by learned counsel for respondent that when complainant has already been allowed DPC, same is not entitled for any other compensation as prayed by him. Per contra, according to learned counsel representing the complainant despite having order for DPC, his client is well within



his right to claim compensation as all this caused great harassment to him i.e. complainant. According to him, Section 18 of Act of 2016 allows DPC as well as compensation.

16. I am not in consonance with learned counsel for complainant claiming that even if DPC has been allowed, complainant is entitled for compensation for mental harassment. As per Section 18 (1) of Act of 2016, if the 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.** Proviso added here 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.

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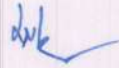


17. Admittedly, complainant has already been allowed delay possession compensation along with interest. The proviso added to section 18 (1) of Act of 2016 does not mention about the compensation as has been described in case where the allottee wishes to withdraw from the project. Trite it to say that complainant did not wish to withdraw from the project but claimed only delay possession compensation. The DPC is in the form of compensation because Rule 15 of The Haryana Real Estate (Regulation and Development), Rules, 2017 provides for awarding of interest which shall be State Bank of India highest marginal cost of lending rate + 2%. As mentioned above, when complainant has already been allowed DPC, no reason to grant him further compensation for the same cause.

18. The complaint is thus, dismissed.

19. File be consigned to record room.

Announced in open Court today i.e. 26.05.25.

  
(Rajender Kumar)  
Adjudicating Officer,  
Haryana Real Estate  
Regulatory Authority,  
Gurugram.26.05.2025