

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

**Complaint No. 607-2021**

**Date of Decision: 26.05.2025**

**Akshay Gupta and Swati Gupta, 1103, Ricmond Omaxe Hills,  
Badkal Surajkund Road Near Anangpur Chowk, Faridabad-  
121010 Haryana**

**Complainants**

**Versus**

**M/s. Emaar India Limited (Formerly Emaar MGF Land Limited,) ECE House 28 Kasturba Gandhi Marg, New Delhi-110001**

**Respondent**

**APPEARANCE**

**For Complainants:  
For Respondent**

**Mr. Ajit Jain, Advocate  
Mr. Ishaan Dang, Advocate**

**ORDER**

1. This is a complaint, filed by Akshay Gupta and Swati Gupta (allottees) against M/s. Emaar India Limited (promoter) seeking compensation.
2. According to complainants, they are law-abiding citizens of India. The respondent is a company incorporated under The Companies Act, 1956, having its registered office at ECE House, 28

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Kasturba Gandhi Marg, New Delhi-110001. The respondent deals in the construction of buildings and apartments and is responsible for the development of the Project, same comes within the meaning and ambit of a "promoter" as per section 2(zk) of The Real Estate (Regulation & Development) Act 2016.

3. That they (complainants) purchased a Unit EEA-E-F05-02, 5<sup>th</sup> Floor, Tower-E, super area 1310 sq. ft in the project "Emerald Estate", sector 65, Urban Estate, Gurugram from its original allottee, Aparna Kapur. A nomination letter dated 05.12.2012 were executed between them (complainants and original allottee). Respondent endorsed the same in their favour.

4. That the Original Builder Buyer agreement dated 20.02.2010 was endorsed to them (complainants) on 18.10.2012. At the time of purchase of the Unit by them (complainants), the construction of tower in which the Unit was situated was at the "start of construction" stage. The respondent was liable to give possession of the Unit by 20.02.2013. They (complainants) took financial assistance from HDFC Bank to pay the sale consideration to the respondent and the premium amount to the original allottee. A tripartite agreement dated 07.12.2012 was executed between the respondent, the complainants and the HDFC Bank. The loan was approved from HDFC Bank vide



offer letter dated 08.11.2012. An initial amount of Rs.11,00,000/- was paid to the original allottee vide cheque no. 616485 drawn on ICICI Bank.

5. That the delivery of the possession of the Unit was delayed by the respondent. They (complainants) were regular in making payment of the EMI even while residing on a leased accommodation at Richmond-1103, Omaxe Hill, Faridabad and the lease for the same was Rs. 25,000/-.

6. That total amount paid as EMI to the HDFC Bank for the period of January 2013 to June 2015 was Rs. 10,65,091/-. Thereafter, they (complainants) transferred the Housing Loan previously taken from HDFC Bank to ICICI Bank to reduce the expense of EMIs payable at lower rate of interest. They (complainants) transferred their Housing Loan from ICICI Bank to HDFC Bank in the May month of 2018 and paid a total amount of Rs. 10,75,501/- for the period starting from May 2018 to 05.11.2020.

7. Although possession of subject unit was offered by the respondent on 20.11.2020, same was not in habitable condition and there were following snags as noted by them. Same were: -

- a. Switches of master washroom were not in a workable condition.

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- b. Wall tiles were chipped off in master washroom.
- c. Switch panels were unfixed.
- d. Washroom ties had to be changed.
- e. UPC window silicon required.
- f. Common washroom door shutter.
- g. Kitchen counter had to be changed.
- h. Under counter finishing not done
- i. Rusting had to be removed.

8. It is further plea of complainants that even if delayed, possession of subject unit was offered to them on 20.11.2020 but no conveyance deed has been executed till now. Due to delay in possession, stamp duty, which was required to be paid by them (complainants), has been increased within limits of Municipal Corporation of Gurugram from Rs.1,92,040/- to Rs. 2,88,060/- i.e. by Rs. 96,020/-.

9. The complainants claim again that due to delay in possession, they had to pay rent from July 2013 to April 2018 well described in the complaint. Further due to delay in handing over of possession, they suffered mental trauma, harassment and financial imbalance.

10. An application filed by them (complainants) seeking amendment/modification of the complaint was allowed vide order

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of this forum dated 30.03.2022. After amendment in the complaint, the complainants have sought following reliefs: -

- a. To direct the respondent to pay compensation of Rs. 10,04,974.36 on account of lease expenditure: -
- b. To direct the respondent to pay compensation of Rs. 1,00,000/- due to providing with inhabitable possession after making the offer of possession.
- c. To direct the respondent to pay compensation of Rs. 1,50,000/- on account of mental trauma, harassment and agony undergone by the complainants.
- d. To direct the respondent to pay compensation of Rs. 1,00,000/- for unilaterally charging excess and unjustified charges;
- e. To direct the respondent to pay compensation of Rs. 1,00,000/- for unilaterally charging excess and unjustified charges.
- f. To direct the respondent to return additional amount of Rs. 26,909/- by the respondent.
- g. To pass any other order as the Hon'ble Adjudicating Officer may deem fit.

11. The respondent contested the complaint by filing a written reply. It is averred that present complaint is not

  
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maintainable, being barred by limitation, estoppel, locus standi or cause of action, concealment of true facts etc. The complainants are not allottees but investors.

12. That the original allottee, (Aparna Kapur), through her property dealer i.e. Rajdhani Realtors Pvt Ltd, had approached the respondent sometimes in the year 2010, for purchase of an independent unit in its upcoming residential project "Emerald Estate Apartments" situated in Emerald Estate, Sector-65, Gurgaon (hereinafter "the project").
13. That prior to approaching respondent, the original allottee had conducted extensive and independent enquiries regarding the project and same was satisfied with regard to all aspects of the project. The original allottee took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent.
14. That at the time of booking, the original allottee was duly informed by the respondent that the building plans of the project were yet to be approved by the competent authority. This fact was clearly and transparently disclosed to the original allottee at the time of booking itself and clearly mentioned in the application form.
15. That an apartment bearing No.EEA-E-F05-02 was provisionally allotted to the Original Allottee having tentative

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super area of 1280 sq. ft. Buyer's Agreement executed between the Original Allottee and the respondent dated 20.02.2010 and Original Allottee agreed and undertook to be bound by the terms and conditions of the application form and the Buyer's Agreement.

16. That the original allottee and the complainants approached the respondent and jointly requested it (respondent) to transfer the allotment of the Unit in question in favour of the complainants.

17. That the original allottee as well as the complainants executed transfer documents copies on the basis of which the respondent transferred the allotment in favour of the complainants. The agreement to sell dated 18.10.2012 executed by the original allottee and the complainants is annexed as Annexure-R5. Transfer documents executed by the original allottee and the complainants are Annexures R-6A to R6G. Letter dated 05.12.2012 confirming the transfer of nomination in favour of the complainants is Annexure R-7. Payment request letters issued to the original allottee and complainants are collectively annexed as Annexure R8. Statement of Account reflecting the payments made by the original allottee/complainants dated 13.03.2021 is annexed R9.

18. The complainants executed an affidavit and Indemnity cum Undertaking whereby they (complainants) admitted and



undertook that they shall not be entitled to any compensation for any delay in possession.

19. That Clause 13 (c) of the Buyer's Agreement provides that compensation for any delay in delivery of possession shall only to be given to such allottees, who are not in default of their obligations envisaged under the Agreement. In case of delay caused due to non-receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other amount shall be payable to the allottees under Clause 13 (d) of the Buyer's Agreement.

20. That the rights and obligations of complainants and the respondent are completely and entirely determined by the covenants incorporated in the Buyer's Agreement as amended by the transfer documents executed by the complainants, which continue to be binding upon the parties. Clause 11 of the Buyer's Agreement provides that subject to the allottees having complied with all the terms and conditions of the Agreement not being in default of the same, possession of the unit would be handed over within 36 months plus grace period of 6 months from the date of commencement of construction.

21. That time was not the essence of the contract, when it comes to delivering possession for the reason that there is no express stipulation in the Buyer's Agreement to this effect.

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22. That the respondent was constrained to terminate the contract with the contractor vide termination notice dated 30.08.2018 and after its termination, the respondent filed a petition against the contractor before Hon'ble Delhi High Court seeking interim protection in order to avoid disturbance in the possession and work at the site.

23. That a matter came up for hearing on 6<sup>th</sup> of September 2018. The Hon'ble High Court by order dated 6<sup>th</sup> of September 2018 disposed of the said case and issued several directions. The Hon'ble High Court appointed Justice AP Shah (Retd) as the Sole Arbitrator for adjudication of disputes between the respondent and the contractor. Furthermore, RITES Ltd (A Govt Undertaking) was appointed as the Local Commissioner to inspect and to take measurement of work done. The High Court gave liberty to the respondent to award the contract to new agency for completing the remaining work.

24. That the arbitration proceedings titled as BL Kashyap and Sons vs Emaar MGF Land Ltd (Arbitration case No.1 of 2018) before Justice AP Shah (Retd), Sole Arbitrator have been initiated. The Hon'ble Arbitrator vide order dated 27.04.019 gave liberty to the respondent to appoint another Contractor w.e.f. 15.05.2019.

25. Contending all this, respondent prayed for dismissal of complaint.

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26. Both of the parties filed affidavits in support of their claims. I have heard learned counsels appearing for both of parties and perused the record.

27. At the outset, it is contended by learned counsel for respondent that at the time of taking possession, allottees-DHs gave an undertaking to his client i.e. respondent stating that they will not claim any compensation. Despite said undertaking, complainants opted to approach this forum seeking compensation. Complaint in this regard is not maintainable.

28. On the other hand, according to learned counsel for complainants, his clients had no option to give such an undertaking because they had to take possession.

29. Even if any such undertaking was given by the complainants, same is not binding, being contrary to law i.e. provisions of Act 2016. It is well settled that there cannot be estoppel against law. I do not find any weight in this plea of learned counsel for respondent.

30. What so, if the respondent had any dispute with its contractor<sup>or</sup> Respondent had to approach Delhi High Court or any Arbitrator was appointed by the High Court. The complainants,

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who paid sale consideration in time, cannot be deprived of their right, due to any dispute between the promoter/respondent and a contractor, as claimed by it (respondent).

31. So far as plea of respondent that as per BBA, only those allottees, who are not in default of their obligation, are entitled for DPC, is concerned, same BBA allows promoter to charge interest (penal) in case buyer fails to make payment in time. When promoter has this remedy provided under the BBA, same cannot abnegate right of buyer to claim DPC in case, promoter fails to complete construction as per that BBA. Similarly, when promoter himself agreed to deliver project till a specific date, same cannot claim that time of delivery was not essence of contract.

32. As per complainants, after being offered possession on 20.11.2020, they paid Rs. 192,040/- against stamp duty as demanded by respondent. Copy of E-challan Annexure-10 is on the file. According to learned counsel for complainants, despite making payment of stamp duty on entire sales consideration, respondent did not execute sale deed/conveyance deed and his clients were made to pay Rs. 96,020/- more for stamp duty.

33. Learned counsel for respondent did not refute this fact. Considering all this, it is well established that complainants had to

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pay Rs. 96,020/- more for stamp duty due to fault of respondent, for not executing sale deed/conveyance deed in time, despite having collected money for stamp duty, as was applicable on relevant date. Respondent is thus liable to pay this amount i.e. Rs. 96,020/- to the complainants.

34. Pictures/photos showing such snags are put on file as Annexure-6. The respondent did not adduce any evidence to verify that construction was complete as per agreement. In this way, there is no reason, not to believe the complainants alleging that construction was not complete as per BBA and there were snags in the unit.

35. However, complainants could not adduce any evidence to prove as what it costed to them to make repair/renovation filling those snags. Keeping in view nature of deficiencies and cost of articles, I allow a sum of Rs. 1,00,000/- (one lac) to the complainants on this count, to be paid by the respondent.

36. The complainants have prayed for Rs. 10,04,974.36 on account of lease expenditure. For the sake of arguments, even if it is presumed that the complainants had to pay lease amount/rent due to delay in handing over of possession. Even as per complainants, they have already been allowed delayed possession compensation by the

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Authority, no reason to allow rent/lease amount even if paid by them. Amount of DPC is a form of compensation provided to the allottee, when promoter failed to complete the project/unit in agreed time. As per Rule 15 of The Haryana Real Estate (Regulation and Development) Rules 2017, "interest at the rate prescribed" shall be State Bank of India highest marginal cost of lending rate + 2%. Perhaps due to same reason, the parliament by enacting section 18(1) of Act of 2016, provided for compensation along with refund of amount, in case, promoter fails to complete the project/unit in agreed time but not in case, when the allottee does not opt to withdraw from the project. Request for compensation in this regard is thus declined.


37. The complainants have sought a sum of Rs. 1,50,000/- on account of mental trauma, harassment and agony undergone by them. Apparently, when possession was not given in time and when given, there were several deficiencies in the unit. Moreover, complainants were made to pay more amount on stamp duty. All this is enough to presume that complainants suffered mental harassment and agony due to act of respondent. Same are allowed a sum of Rs. 1.50 lacs on account of mental trauma, harassment and agony suffered by them.

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38. No reason to allow any other compensation as claimed by the complainants.
39. Complaint is disposed off. Respondent is directed to pay aforesaid amounts along with interest at 10.50% per annum from date of order, till amount is realized. File be consigned to record room.

Announced in open court on 26.05.2025.

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