

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

Complaint No.2841-2023

Date of order: 25.08.2025

Ajay Singh and another versus M/s Emaar India Ltd.

Present: Mr. Kuldeep Kumar Kohli, Advocate for
applicants/complainants.
Mr. Dhruv Rohatgi, Advocate for non-applicant/respondent.

Order:

A complaint no. 2841 of 2023 filed by
applicants/complainants (Ajay Singh and another), was decided by this
Forum vide order dated 13.01.2025. Arguments heard on an application
filed by the applicants/complainants, seeking rectification in that order.

2. Aforesaid complaint was filed after another complaint lodged
by same complainants, i.e. complaint no. 905 of 2019 which was allowed
by the Authority through order dated 01.10.2021. The respondent was
directed to pay interest at the prescribed rate of 9.30% per annum for
every month of delay on amount paid by the complainants from due date
of possession i.e. 26.08.2013 till 26.01.2021 i.e. expiry of 2 months from
the date of offer of possession (26.11.2020) --. Aggrieved by said order,
present respondent preferred an appeal (Appeal No. 162 of 2022). The
Haryana Real Estate Appellate Tribunal (in brief the Tribunal) was pleased

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to allow said appeal. Impugned order was modified with clarification that due date of possession of the unit to the allottees was 26.02.2014. The Tribunal directed that in case, respondents-allottees are not given possession within one month of said order, then the appellant (present respondent) was to pay a cost of Rs.2000/- per day to the allottees from the date of order till actual handing over of the unit.

3. It is contended by learned counsel for applicants/complainants that his clients (complainants) faced so much mental agony because of irresponsible behaviour of the respondent. They were entitled for a sum of Rs.5 lacs as mental agony.


4. Through impugned order, the complainants have been allowed a sum of Rs.2 lacs in the name of mental agony, pain and suffering. Undisputedly respondent failed to deliver possession of subject unit in agreed time. It was claimed that allottees-complainants had paid more than the entire sale consideration. Despite all this, they were not handed over possession of their dream-unit. As stated earlier, the complainants have already been allowed delay possession compensation (DPC) by the Authority. Moreover, the Appellate Tribunal, while modifying said order has directed the promoter-respondent to pay Rs.2000/- per day, to the complainants, till same receive possession of their unit. It is pointed out

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that possession has been handed over to the allottees along with amount of penalty. Despite all this, a sum of Rs.2 lacs has been allowed to complainants for mental agony, pain and suffering. Rs.5 lacs as claimed by the complainants in above stated circumstances appeared excessive and hence compensation of Rs.2 lacs only was granted, which in my opinion was enough to compensate them. No reason to review said order.

5. It is again plea of learned counsel for complainants that the latters incurred expenses of Rs.3 lacs in pursuing the matter initially before Real Estate Regulatory Authority (Authority) and subsequently by filing execution petition before the A.O. and hence were entitled for legal expenses of Rs.3 lacs.

6. Through impugned order, a sum of Rs.50,000/- was allowed to the complainants as litigation cost (in present case only) to be paid by the respondent. The grievance of complainants is that same were not allowed legal expenses for pursuing earlier complaint i.e. before the Authority and again for the execution petition. According to learned counsel for applicants/complainants even if complaint before the Authority was a separate complaint, the Authority has no power to grant compensation. Prayer made by his clients before the Authority for compensation in the name of litigation expenses was declined stating that the Authority has not


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been empowered to grant compensation, which includes compensation in the name of litigation expenses. Learned counsel requests to allow litigation expenses for the complaint which was filed before and decided by the Authority.

7. This Forum (A.O.) has been empowered by the Act of 2016 to adjudge compensation according to Section 71 of the Act, for violation of sections 12, 14, 18 and 19 of the Act. To award litigation cost is not compensation under any of sections i.e. 12, 14, 18 or 19 of the Act. It does not provide for compensation in a complaint filed before another Forum like Authority. I am not in consonance with learned counsel contended that the Authority had no power to allow litigation cost, in a complaint filed before and decided by the same (Authority). Every judicial or quasi-judicial – Authority/Court which has power to decide a lis, has power to dispose it of with or without cost. Generally, cost is allowed in favour of a winning party. Where some issues are decided in favour of one party and some in favour of the other, the Court/quasi-judicial body can direct parties to bear their own costs. It is for the deciding authority/court as how and by which of the parties, cost is to be borne. This Forum can allow or dis-allow litigation cost only about a matter pending before it and not about a matter which was pending and decided by the Authority. Prayer to allow litigation

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expenses incurred by complainants while pursuing their complaint before the Authority, was thus declined.

8. No reason to modify the impugned order in this regard. If the applicants have grievance for not allowing litigation cost by the Authority, they have legal remedy with them.

9. It is again the plea of learned counsel that his clients (complainants) were entitled for DPC till same received possession but as mentioned earlier, the Authority allowed compensation from due date of possession i.e. 26.08.2013 till 26.01.2021 i.e. expiry of 2 months from the date of offer of possession (26.11.2020) but his clients received possession only on 13.06.2024. Learned counsel claims that his clients are entitled to receive DPC of period between 26.01.2021 (allowed by the Authority) and 13.06.2024, when actual possession was received by them.

10. This plea is opposed by learned counsel for respondent contending that his client has already filed appeal before Appellate Tribunal against impugned order (passed by this Forum) and as per Section 39 of Act of 2016, no such amendment/rectification can be allowed in respect of any order against which an appeal has been preferred under this Act. Learned counsel put on file copy of an order passed by the


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Appellate Tribunal dated 18.04.2025 to verify pendency of appeal filed by his client i.e. Appeal No. 217 of 2025.

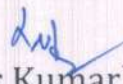
11. Apparently, proviso added to section 39 makes it clear that no such amendment/rectification can be made in respect of an order against which an appeal has been filed by any of the parties. Even otherwise, proviso to sub-section 1 of section 18 ^{clarifies} ~~makes it clear~~ that where an allottee 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----- . As stated earlier, complainants filed a complaint before the Authority seeking DPC and said complaint has been allowed. As per mandate given by Apex Court in famous ^{case titled as} **New-tech Promoters & Dev. V. State of UP etc.**, the Authority, ^{the} and not A.O. has jurisdiction to allow relief of DPC. Even if the complainants had grievance that as per law, they were entitled for DPC till the date, they receive possession and the Authority through ^{order} ~~complaint~~ referred above, allowed DPC from due date of possession **till offer of the possession**, the complainants can take legal recourse by approaching the Authority or the Appellate Tribunal or the High Court, if same have any grievance. This Forum has no jurisdiction to allow DPC to the complainants particularly, when the allottees have already availed opportunity by filing a complaint in this regard.

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12. No reason for rectification/modification in the impugned order. The application is thus dismissed.

13. File be sent back to the record room.

Announced in open court today i.e. on 25.08.2025.


(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory
Authority, Gurugram.
25.08.2025