

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

Complaint No.4401 of 2023
Date of Decision: - 04.08.2025

Babita Tiwari & Yogesh Tiwari, both residents of H-41/7, DLF
Phase-I, Gurugram, Haryana-122002.

Complainants.

Versus

M/s. Emaar India Ltd. (Formerly known as M/s Emaar MGF
Land Ltd.). Office address: Emaar Business Park, M.G. Road,
Sikanderpur Chowk, Sector-28, Gurugram, Haryana-122002.
Also At: 306-308, Square One, C-2, District Centre Saket, New
Delhi 110017.

Respondent

APPEARANCE

For Complainants: Mr. Manish Yadav, Advocate
For Respondent Mr. Ishaan Dang, Advocate

ORDER

1. This is a complaint filed by Babita Tiwari & Yogesh Tiwari (allottees) 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 III", 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. The subject matter of the claim falls within the jurisdiction of the Adjudicating Officer.

3. The complainant's case, as culled out from the arguments of parties ^{and their pleadings is} ~~that~~ that they (complainants) were allotted a unit i.e. EPF-III-44-301/Apartment No. 301, 3rd Floor, Tower 44 Admeasuring 1975 Sq. ft. of respondent in latter's project namely "Emerald Floors Premier III", at Emerald Estate at Sector 65, Gurugram, for a total sale consideration of Rs.1,35,94,337/-. A builder buyer agreement (BBA) was executed between the parties. According to which, the respondent was obliged to deliver possession within 24 months from the date of execution of agreement, which was executed on 07.03.2012 along with a grace period of 3 months for offering possession of the unit. Effectively, the possession of the apartment was to be delivered on or before 07.06.2014. The respondent failed to hand over possession, till this date.

dr.
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4. That the Hon'ble HARERA, Gurugram was pleased to pass an order in favour of the complainants vide order/judgment dated 15.12.2021, directing the respondent to pay interest @ 9.30% P.A. from 07.03.2014 i.e. due date of possession till 14.02.2021 i.e. expiry of 02 months from the offer of possession. The arrears of interest accrued to the complainant were to be paid within 90 days from the date of order. The complainants were also directed to pay the outstanding dues, if any after the adjustment of interest for the delayed period. The respondent was also directed to not charge anything which is not part of BBA.

5. That the complainants made several requests, but the respondent did not pay even single penny to them (complainants) as per the order of the HARERA, Gurugram and did not even hand over possession of the allotted unit, to them.

6. Contending all this, the complainants have sought following compensation: -

i. Directing the respondent for compensation for delay in handing over the actual physical possession from 15.02.2021 till 25th January 2023 when the actual physical possession was handed over at interest rate of 9.30% as awarded by Hon'ble Authority, HRERA, Gurugram as the complainants were

deliberately deprived off the actual physical possession despite no fault on part of the complainants for reason best known to the respondent.

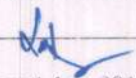
ii. Compensation for loss of rental income from 15.02.2021 till 25th January 2023 @ rate of Rs.69,000/- per month as prevalent in the vicinity of the project and allotted unit.

iii. Compensation for Rs.10,00,000/- for the mental harassment and agony suffered at the hands of the respondent.

iv. Cost of the ligations of Rs.2,00,000/- for seeking the relief and for payment of counsel fee and miscellaneous expenses at HARERA Gurugram for fling complaint and for execution along with representation through counsel at Appellate Tribunal.

v. Any other order which this Court may deem fit and proper be also granted in the interest of justice.

7. The respondent contested claim of complainants by filing a written reply. It is denied that the subject matter of the instant claim falls within the jurisdiction of the Hon'ble Adjudicating Officer. It is submitted that the respondent has already delivered physical possession of the unit booked by the complainants on 25.01.2023. It (respondent) has duly fulfilled its


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obligations under the Buyer's Agreement as well as RERA Act, 2016. It is submitted that present complaint is not maintainable in law or on facts. The complainants have no locus standi or cause of action to file the present complaint. The complainants had opted for a construction linked payment plan and had agreed and undertaken to make payment in accordance therewith. However, the complainants started defaulting in payments right from the very beginning and consequently became liable for payment of delayed payment charges. Various demand letters and reminders for payment were issued by the respondent calling upon the complainants to make payment in accordance with the applicable payment plans. The contractual relationship between the respondent and complainants and the respondent is governed by the terms and conditions of the Buyer's Agreement. At the request of the complainants for release of the undisputed amount, which request was not objected ^{to} by the counsel for the respondent, an amount of Rs.56,40,212/- was ordered to be released to the complainants. The said amount has been duly released by the Hon'ble Authority vide order dated 29.05.2023. In the meantime, in compliance with the order dated 21.11.2022 passed by the Hon'ble Appellate Tribunal whereby the respondent was directed

to consider the possibility of handing over possession of the unit to the complainants after acceptance of the due amount, the respondent duly handed over possession of the unit to the complainants on 25.01.2023, ^{through} ~~to~~ a duly authorized representative ^{of the complainants.}

8. It is further ^{averred} ~~submitted~~ that the complainants have been duly compensated for delay in delivering possession, by the Hon'ble Authority. The complainants never pursued their request for refund. [✓] So far as compensation is concerned, the respondent duly credited compensation amounting to Rs.6,84,378/- at the time of offer of possession and thereafter have also paid an amount of Rs.56,40,212/- to the complainants as delay possession compensation in accordance with the directions passed by the Hon'ble Authority.

9. 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.

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

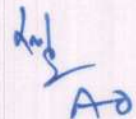
11. I have heard learned counsels appearing on behalf of both of parties and perused the record on file.

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12. Admittedly, complaint No. 405/2020 filed by present complainants seeking delay possession compensation has already been allowed by the Authority vide order dated 15.12.2021. Complainants have been granted interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by them from due date of possession i.e. 07.03.2014 till 14.02.2021 i.e. expiry of 2 months from the date of offer of possession (14.12.2020). I find weight in the plea of respondent claiming that award of interest was in the form of compensation.

13. 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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14. It is worth mentioning here that complainants 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.

15. [✓] Upholding that the claim of compensation and interest can be allowed only in case, the allottee seeks to withdraw from the project as per Section 18 (1) of Act of 2016, following was held by Uttar Pradesh Real Estate Appellate Tribunal in case

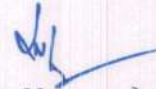
"Greater Noida Industrial Development Authority vs. Ranjan Misra" Appeal No. 70 of 2023 decided on 20.04.2023-----;

"13.9. If we closely examine the above two provisions, it comes out that in a case where the Allottee exists the projects, the Act expressly provides INTEREST AND COMPENSATION both, but in cases where the Allottee tends to stay in the project the Allottee is only entitled for interest of every month till the handing over of the possession. Thus, the intention of the legislature was to provide Compensation only to those Allottees who exit the project and not to those who tends to stay in the project."

16. When complainants have 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.

17. File be consigned to the record room.

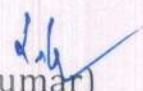
Announced in open court today i.e. on 04.08.2025.


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

Present: Mr. Manish Yadav, Advocate for complainants.
Mr. Ishaan Dang, Advocate for respondent.

Complaint is disposed of, vide separate order today.

File be consigned to record room.


(Rajender Kumar)
Adjudicating Officer,
04.08.2025