

<b>PROCEEDINGS OF THE DAY</b>		<b>59</b>
Day and Date	Tuesday and 05.08.2025	
Complaint No.	CR/4700/2024 Case titled as Simmi Sikka VS Emaar India Limited	
Complainant	Simmi Sikka	
Represented through	Shri Jeewan Chandra Advocate	
Respondent	Emaar India Limited	
Respondent Represented	Shri Dhruv Rohatgi Advocate	
Last date of hearing	06.05.2025	
Proceeding Recorded by	Naresh Kumari and HR Mehta	

### **Proceedings-cum-order**

The present complaint was filed on 24.09.2024 and the reply on behalf of the respondent has been received on 07.02.2025.

The complainant in its complaint submitted that an earlier complaint was filed against the respondent which was allowed by the Authority on 22.02.2018. However, the present complaint is filed based on the discovery of new evidence and material arithmetic errors. The complainant contends that the judgment was based on misrepresented facts, including an increase in area from 695.67 sq. ft. to 928.63 sq. ft., wrong pricing and wrong charging of IFMS. The respondent misled both the complainant and the Authority by making offer of possession for an area of 928.63 sq. ft., despite knowing that the actual approved and constructed area, as obtained through RTI ("As Built" and "Approved" plans), is only 695.67 sq. ft.

Further, the respondent's statement dated 12.07.2018 reflected a total payable amount of Rs.86,91,133/-, which was wrong and formed the basis for the Authority's order dated 21.08.2018. The correct amount, based on the actual approved area of 695.67 sq. ft., is Rs.61,83,154/-, thereby rendering the offer of possession invalid. To date, the respondent has refunded only Rs. 15,40,731/- on 21.02.2023. A significant balance amount remains unpaid, both towards the





**HARERA**  
**GURUGRAM**

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**

**हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम**

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

CR/4700/2024

principal and applicable interest, even after accounting for the cost of the actual area allotted.

On contrary the respondent in its reply submitted that the complainant had filed the earlier complaint bearing no. 07 of 2018 before the Authority in respect of shop no. EPS-SF-019 having tentative super area 928.65 sq. ft. and situated in the commercial project developed by the respondent known as "Emerald Plaza", in Sector -65, Gurugram. The complainant, *inter alia*, alleged delay by the respondent in offering possession and also alleged that the super area of the shop had been reduced by 228 sq. ft. and the said complaint was disposed of vide order dated 21.08.2018

Submissions Heard. All the pleadings are on record.

The Authority observes that earlier too the complainant filed a complaint no. 07/2018 before the Authority which was disposed off vide order dated 21.08.2018. The directions passed by the Authority in its order dated 21.08.2018 are reiterated herein for ready reference.:

- (e) *The advance amount of Rs.30,00,000/- which the complainant had paid to the respondent and had to be rebated with interest @ 12% p.a. has been adjusted upto 21.02.2018 i.e., a day prior to the date of offer of possession. The respondent has fulfilled his obligation regarding payment of interest on advance amount of Rs.30,00,000/-.*
- (f) *The prayer of the complainant regarding payment of interest at the prescribed rate for every month of delay, till handing over of possession on account of failure of the promoter to give possession in accordance with the terms of the agreement for sale as per provisions of section 18(1) is hereby allowed. The authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.45% per annum on Rs.29,00,706 the amount of the complainant with the promoter on the due date of possession i.e., 09.11.2016 up to the date of offer of possession i.e. 22.02.2018. The payment of interest on the advance amount of Rs.30,00,000/- has already been paid by the promoter as mentioned in the above para. The interest to be allowed on the investment of the complainant comes out to be Rs.3,89,851/-. The complainant reserves the right to seek compensation in addition if required, the application for which may be filed separately to the adjudicating officer.*
- (g) *As per the accounts of statement submitted by the respondent, the outstanding amount as on the date of offer of possession, which the complainant has to pay is Rs.7,04,582/-. The respondent is liable to pay to the complainant interest of Rs.3,89,851/-. The authority directs the respondent to adjust the interest amount of Rs.3,89,851/- in the final outstanding amount of Rs.7,04,582/- against the*





**HARERA**  
**GURUGRAM**

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**

**हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम**

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी. डब्ल्यू. डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

CR/4700/2024

*complainant. The balance amount payable to respondent after adjustment of the interest comes out to Rs.3,14,731/-.*

- (h) *Since the respondent has reduced the area of the said unit by 228 sq. ft. therefore the complainant shall only be charged for the area being offered and not for the total area mentioned in the agreement. The parties may accordingly settle their accounts and possession be handed over as per law.*

Thereafter, both the parties preferred appeals against the said order dated 21.08.2018 passed by the Authority. **Both the appeals (bearing no. 52 of 2018 and 64 of 2018 respectively) were dismissed by the Hon'ble Appellate Tribunal vide its order dated 03.11.2020.** The relevant part of the said appeals is reiterated herein for ready reference:

*"71. Consequently, the impugned order passed by the learned Authority does not suffer any legal infirmity or illegality calling for any interference by this Tribunal. Resultantly, both the appeals being without any merit are hereby dismissed."*

Further, the complainant had also moved an application before the Authority on 03.10.2022 i.e. post decision of the abovementioned appeals on 03.11.2020 seeking rectification of the order passed by the Authority on 21.08.2018 for rectification of the amount paid by the complainant. The complainant submitted that he had paid an amount of Rs.81,19,767/- instead of Rs.79,99,412/- to the respondent. However, the **said rectification application was dismissed by the Authority on 27.10.2022.** The relevant part of the said rectification order is reiterated herein for ready reference:

*"Further the complainant has also preferred an appeal before the Hon'ble Tribunal and hence in terms of section 39 of the Act any rectification or review does not lie with the authority. The counsel for the respondent states that the payment of interest as well as the amounts shall be paid as per orders of the authority.*

*Matter stands disposed off. File be consigned to the registry."*

Thereafter, the complainant had also sought execution of the said order dated 21.08.2018 by filing execution proceedings bearing no. Ex 7579/2022/7/2018 before the Adjudicating Officer. **However, the complainant himself withdrew the said execution petition on 27.09.2024.** The order dated 27.09.2024 is reiterated below:

*"PoA of DH Sh. Amit Sikka, requests to withdraw the execution petition. His statement is recorded separately. Considering*





**HARERA**  
**GURUGRAM**

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**

**हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम**

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी. डब्ल्यू. डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

CR/4700/2024

***statement given by attorney of petitioner, Execution petition is dismissed as withdrawn.***

***File be consigned to the record room."***

Herein, through the present complaint, filed on 24.09.2024 complainant is seeking reliefs for recalculation of amounts based on correct area, refund of excess payments and interest on excess amount under Section 18(1) of the Act, compensation for delay, directions regarding conveyance and maintenance charges, reconsideration of offer of possession of 695.67 sq. ft.

It is pertinent to observe that the reliefs now sought by the complainant are substantially similar to, or arise out of, issues already heard in the earlier proceedings, **and therefore the complaint is barred by the principle of 'Res Judicata'.**

Furthermore, the Authority is of the considered view that other reliefs claimed such as recalculation of amount payable, compensation falls outside the scope and jurisdiction of the Authority as prescribed under the Act and the Rules/Regulations.

The claim of "discovery of new evidence" is also not tenable. The documents being relied upon, such as approved and sanctioned plans obtained through RTI, were reasonably accessible at the time of the original complaint and appeal. They do not constitute new evidence, and cannot be a ground to institute a fresh complaint already decided on merits. Even otherwise vide order dated 21.08.2018 the Authority has already directed the respondent to only charge for the area offered by the respondent and not for the total area as had been mentioned in the agreement.

Thus, in light of the earlier adjudication, dismissal of appeals, rejection of rectification, and the nature of reliefs now sought, the Authority finds the present complaint not maintainable.

Matter stands disposed of. File be consigned to registry.

Ashok Sangwan  
Member

  
Arun Kumar  
Chairman  
05.08.2025