

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

Complaint No. 36 of 2024

Date of Decision: 25.11.2025

- (1) Dinesh Kumar Yadav son of Sh. M.R. Yadav,
(2) Mrs Richa w/o Sh. Dinesh Kumar Yadav,

Both residents of H. No. I-2053, Devinder Vihar, Sector-56,
Gurugram, Haryana-122011

.....Complainants.

Versus

M/s EMAAR INDIA LIMITED
(formerly known as EMAAR MGF LAND LTD)
Registered Office at
Emaar Business Park, Sikanderpur,
Sector-28,
Gurugram, Haryana-122001

.....Respondent.

APPEARANCE

For Complainants: Mr. Rohan Suhag, Advocate
For Respondent: Mr. Dhruv Rohatgi, Advocate

ORDER

This is a complaint filed by Mr. Dinesh Kumar Yadav and Mrs Richa (allottees), under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in brief The Act of 2016) read with section 29 of The Haryana Real Estate (Regulation and Development) Rules 2019 (in short, the Rules) against M/s. Emaar India Limited, being a promoter as per section 2(zk) of Act 2016.

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2. Briefly stated, according to complainants, Mr. Roji Pappachan Koshy and Ms Binitha Baby/Binitha Koshy, **(original allottees)** approached the respondent for booking of a unit in the project "Emerald Hills", Sector-65, Gurugram. The respondent allotted them the Unit No. EHF-267-C-GF-030 measuring 1380 sq. ft. The date of provisional allotment letter was 03.07.2009. The Buyer's Agreement was executed between the parties on 26.02.2010. The total sale consideration of the unit was Rs.60,91,859/-. They (complainants) purchased said unit from original allottees named above. A sum of Rs.57,35,725/- in total has been paid to the respondent. The due date of delivery of possession was 26.11.2012, as per clause 13 (i) of the said agreement i.e. within 27 months from the date of execution of the agreement. There is ⁶ delay in handing over possession, which is 6 years 4 months and 13 days. OC was granted by the competent Authority on 03.04.2019.

3. That the respondent miserably failed to complete the project within stipulated period of 27 months as agreed under clause 13 (i) of the BBA. The respondent has committed contraventions in relation to section 11(4)(a) of Act. The complainants filed a complaint before the Authority, Gurugram,

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seeking delay possession compensation, which has been allowed by the Authority.

4. Contending all this, the complainants have 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 complainants further prayed for a sum of Rs.3,00,000/- as legal fees to pursue the case before the Authority as well as before the Adjudicating Officer and again compensation for loss of rent for a period of 9 years and 8 months amounting Rs.55,68,000/-.

5. The respondent contested the complaint by filing a written reply. Following is averred by the respondent: -

6. That present complaint is not maintainable. The complainants have no locus standi or cause of action to file present complaint. This complaint has been filed on the basis of power of attorney claimed to have been executed by the complainants in favour of Shri Ashok Yadav, which is not meant for filing complaint for compensation before the Adjudicating Officer. The complainants are residing abroad. The complainant is not authenticated by an Indian Embassy.

7. That ~~it is further averred that~~ ^{subject} the unit was transferred in the names of the complainants on 17.04.2013 on the basis of

transferred documents and they (complainants) admitted and acknowledged that they were not entitled to claim any compensation for delay in handing over of possession or any rebate or discount from the respondent and undertook not to raise any claim with regard to the same from the respondent. The complainants defaulted in making the payment to the respondent.

8. 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.

9. As per learned counsel for complainants, his clients were in India at the time of filing this complaint and they duly authorised Sh. Ashok Yadav to file and contest present matter. Respondent failed to rebut said fact. Considering all this, there is not reason to dismiss present complaint on ^{Sas is of this} the preliminary issue.

10. Admittedly, complaint No. 2631/2019 filed by present complainants has already been allowed by the Authority vide order dated 04.02.2020. The respondent has been directed to pay interest at the prescribed rate i.e. 10.20% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 26.11.2012 till the offer of possession i.e. 08.04.2019. The arrears of interest accrued so far were paid to the complainants within 90 days from the date of the order.

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11. An appeal (No. 296 of 2020) was filed against said order. While deciding said appeal, the ^{Appellate ✓} Tribunal is stated to have modified said order of Authority dated 04.02.2020 directing that DPC at the prescribed rate of 10.20% shall be payable to the complainants from the due date of possession i.e. 26.11.2012 on payments made before 26.11.2012 and in respect of payments made after 26.11.2012, interest shall be payable from the respective dates of payment made after 26.11.2012.

12. 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.**

13. 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.

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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 failed 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.

14. Upholding that the claim of compensation and interest can be allowed only in case where 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 were closely examine the above two provisions, it comes out that in a case where the Allottee exists the projects, the Act expressly


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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."

15. When complainants have already been allowed delayed possession compensation by the Authority for delay in handing over possession of allotted unit, there is no reason to allow separate compensation for same cause of action i.e. delay in delivering of possession. Complaint in hands is thus dismissed.

16. File be consigned to record room.

Announced in open court today i.e. on 25.11.2025.

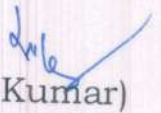

(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate
Regulatory Authority,
Gurugram.

Dinesh Kumar Yadav etc. vs M/s. Emaar India Limited

Present: Mr. Rohan Suhag, Advocate for complainants.
Mr. Dhruv Rohatgi, Advocate for respondent.

Complaint is dismissed, vide separate order today.

File be consigned to record room.


(Rajender Kumar)
Adjudicating Officer,
25.11.2025