

Col. Kanwar Ripu Sain & Anr. Vs M/s EMAAR India Ltd.

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

**Complaint No. : 281 of 2025  
Date of Decision : 10.02.2026**

1. Col. Kanwar Ripu Sain Jaswal son of late Col. Kuldip Chand (Retired) resident of H.No. B1-17, First Floor, DLF Valley, Sector-3, Pinjore, Kalka, Urban Complex, Panchkula.
2. Mehak Jaswal, daughter of Col. Kanwar Ripu Sain Jaswal, resident of H.No. B1-17, First Floor, DLF Valley, Sector-3, Pinjore, Kalka, Urban Complex, Panchkula.

**.....Complainants**

Versus

M/s EMAAR India Ltd. Regd. Office: EMMAR MGF Business Park, MG Road, Sikanderpur Chowk, Sector-28, Gurugram.

**.....Respondent.**

**APPEARANCE**

**For Complainants : Mr. K. K. Kohli, Advocate  
For Respondent : Mr. Dhruv Rohtagi, Advocate.**

**ORDER**

This is a complaint filed by Col. Kanwar Ripu Sain Jaswal and Mehak Jaswal (allottees), under Section 31 of The Real

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Estate (Regulation and Development) Act, 2016 (in brief "The Act of 2016") against M/s EMMAR India Ltd. (promoter).

2. The brief facts of the complainants' case are that they (complainants) booked a Unit/Plot No. EFP-04-0102, measuring 1650 sq. ft. area in the respondent's project namely, "Emerald Floors Premier" located in Sector-65, Gurugram. A Builder Buyer Agreement (BBA) was executed between the parties on 27.01.2010. Total sale consideration of the said unit was agreed to Rs.72,19,387/-. The total amount paid by the complainants till date was Rs.72,26,135/-. The due date of possession as per BBA was 27.04.2013. The delay in handing over possession till date of filing complaint is 7 years 4 months.

3. <sup>That</sup> The respondent took money from them (complainants) and utilized the same for some other purpose i.e. made investments in some other properties but not executed the project for which the money was collected from the allottees. All this has caused them (complainants) and their family members, physical torture, mental stress, pain and anxiety issues because of the uncertainty in the delivery of the Unit. The due date of delivery of possession as per the Flat Buyer's Agreement was 27.04.2013 and the respondent has not given possession till 18.09.2020. In this way, there has been a delay of 7 years and 4 months. The respondent by using its

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dominant position is dictating its unreasonable demands to the complainants without showing any proficient progress.

4. Contending all this, the complainants have prayed for compensation of Rs.15,00,000/- towards mental agony, physical torture and pain, resulting to complainants by behaviour of respondent, Rs.3,00,000/- as compensation to pursue the case before the Authority as well as before the Adjudicating Officer and Rs.44 lakhs on account of loss of rent.

5. The respondent contested the complaint by filing a written reply mentioning therein that the complaint is not maintainable in view of the fact that the Conveyance Deed of the unit in question has already been executed in favour of the complainants almost 4 years and 10 months prior to filing of the present complaint, without there being any protest, demand of compensation.

6. That Ms. Remy Sethi (Original Allottee) had defaulted in terms and conditions of the Buyer's Agreement dated 27.01.2010 and in the year 2011, the complainant No.1 had approached the original allottee for purchasing her rights and title in the unit in question, on which the original allottee had transferred and conveyed her rights in favour of complainant No.1 vide agreement to sell dated 08.03.2011 and it was conveyed to the complainant

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No.1 that the original allottee had defaulted in timely remittance of the sale consideration and has, consequently, disentitled herself from any compensation. After that, the complainant No.2 had been added as a co-allottee.

7. That the interest demanded by the complainants for the alleged delay is beyond the scope of the Buyer's Agreement. Further, the complaint is barred by limitation. The complainants have alleged that the possession of the unit was to be given not later than 2013 and therefore, cause of action, if any, accrued in favour of the complainants in the year 2013. Thus, seeking interest as a form of indemnification for the alleged delay is barred by limitation.

8. That the respondent has already delivered the possession of the unit in question to the complainants in accordance with the Buyer's Agreement and a compensation amounting to Rs.9,67,542/- has also been paid to the complainants.

9. Denying all other averments, the respondent has prayed for dismissal of complaint. Both of the parties filed affidavits in support of their claims.

10. I have heard learned counsels appearing for both of parties and perused the record.

11. During deliberations, it is agreed by learned counsel for complainants that his clients approached the Authority seeking

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delay possession compensation for delay of delivery of the possession and that complaint has been allowed by the Authority vide order dated 13.08.2024, copy of which has been put on file. The respondent/promoter in that case was directed to pay to the complainant no.1 delayed possession charges at the prescribed rate of 11% per annum for every month of delay from the due date of possession i.e. 27.04.2013 till the date of offer of possession plus two months or the date of actual handing over, whichever is earlier; that the amount of Rs.9,67,5421- already paid by the respondent to the complainants as per statement of account dated 14.07.2021 by the respondent as delay compensation in terms of the Buyer's Agreement shall be adjusted towards delay possession charges payable by the promoter and further, the respondent shall not charge anything from the complainant no.1 which is not part of the Buyer's Agreement, apart from some other reliefs.

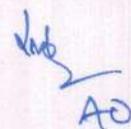
12. It is contended by learned counsel for the complainants that despite said order of the Authority, it is for the Adjudicating Officer to allow compensation for delay in handing over possession, in view of Section 72 of Act of 2016. Learned counsel reminded that this Forum (AO) has jurisdiction to allow compensation in view of Sections 12, 14, 18 & 19 of said Act. Section 18 (3) prescribes for liability of promoter to pay compensation to

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the allottees, if same (promoter) fails to discharge any other obligation imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale. Learned counsel claims that where the respondent (promoter) failed to discharge its obligation of handing over possession in agreed time, as per terms and conditions of BBA, same is liable to pay compensation.

13. It is worth mentioning here that the 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. The parliament did not intend to provide compensation other than DPC in case allottee does not intend to withdraw from the project.

14. 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-----;**

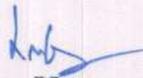
  
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*“13.9. If were closely examine the above two provisions, it comes out that in a case where the Allottee exists the projects, the Act expressly provides INTEREST AND COMPENSATION both, but in cases where the Allottee tends to stay in the project the 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 the 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 **10.02.2026**.

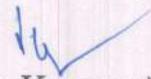
  
(Rajender Kumar)  
Adjudicating Officer,  
Haryana Real Estate  
Regulatory Authority,  
Gurugram.

Col. Kanwar Ripu Sain & Anr. Vs M/s EMAAR India Ltd.

Present: Mr. K. K. Kohli, Advocate for complainants.  
Mr. Dhruv Rohtagi, Advocate for the respondent.

Complaint is disposed of, vide separate order today.

File be consigned to record room.

  
(Rajender Kumar)  
Adjudicating Officer,  
10.02.2026