

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

**Complaint No. 5852-2023  
Date of Decision: 28.04.2026**

Ved Prakash Sharma and Sunita Sharma, both Rs/o H. No. 163, Boulevard Du Lac, The Beverly Hills, 23 Sam Mum Tsai Road, Tai Po, Hong Kong and Chamber No. 09, Maharana Pratap Block, District Court Complex, Gurugram-122001, Haryana.

.....Complainants.

Versus

M/s Emaar India Limited (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 .

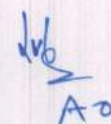
**APPEARANCE**

For Complainants:  
For Respondent:

Mr. Manish Yadav, Advocate.  
Mr. Dhruv Rohatgi, Advocate.

**ORDER**

1. This is a complaint filed by Mr. Ved Prakash Sharma and Ms. Sunita Sharma (allottees) under section 31 of The Real Estate (Regulation and Development), Act 2016 (in brief Act of

  
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2016), against M/s Emaar India Limited (Formerly known as M/s Emaar MGF Land Ltd.) (promoter).

2. According to complainants, they are peace loving and law-abiding persons and the respondent is builder/developer who made tall claims about its project "Imperial Gardens" situated at Sector 102, Gurugram. The present complaint is filed by them (complainants) being aggrieved by the highly unprofessional attitude adopted by the respondent and defective service given by the latter (respondent) despite entire and timely payment, made on behalf of the complainants.

3. That on 26.10.2012 they (complainants) booked a flat/apartment admeasuring 2000 Sq. Ft. and paid Rs.10,00,000/- vide Cheque no. 399773 dated 26.10.2012 as booking amount and signed a pre-printed application form. Flat was purchased under the construction link payment plan for sale consideration of Rs.1,48,65,211/- including B.S.P., E.D.C., I.D.C. and P.L.C.

4. That on 28.02.2013 respondent issued a provisional allotment letter in their favour by allotting Unit No. IG-05-1102, Apartment No.1102, 11<sup>th</sup> Floor, Tower No. 05 admeasuring 2000 Sq. Ft. (approx.) super area in its project, stated above. On 28.05.2013 a pre-printed, arbitrary, unilateral and ex facie Buyer's


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Agreement/ Agreement to sell (BBA) was executed between the parties.

5. In terms of clause 14 of BBA, the possession of unit was to be delivered within 42 months from the date of commencement of construction, along with grace period of 03 months. The complainants have opted for a construction linked payment plan. That the date of start of construction of the project is 11.11.2013. Therefore, the possession of the allotted unit was to be delivered on or before 11.05.2017.

6. That the respondent failed to give possession of the allotted unit within the time period specified in the BBA, without any fault on part of the complainants. On 17.10.2019, the respondent received Occupation Certificate from the competent authorities. On 24.10.2019, the complainants were given offer of possession and for making necessary formalities to take possession.

7. That on 25.11.2019, the complainants made last payment of Rs.9,85,384/- as demanded by the respondent, under protest as without that the respondent was not giving possession of allotted unit. The respondent misused its dominant position. On 09.01.2020, finally the allotted unit was handed over to the

  
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complainants but despite taking the actual physical possession from the respondent, complainants reserved their right for further claims.

8. That on 23.01.2020, conveyance deed of the unit was executed. Compelled by the non-serious and unprofessional attitude on part of the respondent, complainants filed a complaint no. 399 of 2020 titled Ved Prakash Sharma vs. Emaar MGF Land Ltd. before HARERA, Gurugram, on 04.02.2020.

9. That the complainants made timely payment as and when demanded by the respondent, without fail and the project did not face any financial trouble on behalf of the complainants. Despite all this, the complainants were not given possession of their apartment in time. The respondent kept on delaying delivery of the possession of the apartment.

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

i. to direct the respondent for compensation for loss of rental income from 11.08.2017 till 09.01.2021 @ rate of Rs.23,500/- \* 41 months total amounting to Rs.09,63,500/- as prevalent in the vicinity of the project and allotted unit.

ii. to direct the respondent for compensation of Rs.10,00,000/- for the mental harassment and agony suffered at the hands of the respondent.

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iii. to direct the respondent for cost of the ligations of Rs.1,75,000/- 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.

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

11. The respondent contested claim of complainants by filing a written reply. It is denied that the instant claim falls within the jurisdiction of the Adjudicating Officer. It is averred that it (respondent) has already delivered physical possession of the unit booked by the complainants on 09.01.2020 and it has executed the conveyance deed dated 23.01.2020. It (respondent) had duly fulfilled its obligations under the Buyer's Agreement as well as Act of 2016.

12. That the 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

  
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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 complainants and the respondent is governed by the terms and conditions of the Buyer's Agreement. In the present case, the complainants are defaulters who have failed to make timely payment of sale consideration as per the payment plan. The time period for delivery of possession automatically stood extended in the case of the complainants' fault in payment. Moreover, the complainants, being in default, are not entitled to any compensation in terms of Clause 16(c) of the Buyer's Agreement. Furthermore, in terms of Clause 16(d) of the Buyer's Agreement, no compensation is payable due to delay or non-receipt of the occupation certificate, completion certificate and/or any other permission/sanction from the competent authority.

13. That the completion of the project was delayed due to reasons beyond the power and control of the respondent. The respondent completed construction of the unit/tower by February 2019 and applied for issuance of the Occupation Certificate on 11.02.2019. Occupation Certificate was issued by the competent

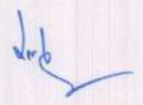
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authority on 17.10.2019. Upon receipt of the occupation certificate, possession of the apartment was duly offered to the complainants. Pertinently, delay compensation amounting to Rs.3,96,493/- was credited to the complainants at the time of offer of possession. The complainants took possession of the unit on 09.01.2020.

14. That the Hon'ble Appellate Tribunal was pleased to dispose off the appeal in terms of the aforesaid observations while directing that the amount of Rs.32,32,317/- pre deposited by the respondent before the Hon'ble Appellate Tribunal in terms of Section 43 (5) of RERA, be sent to the Hon'ble Authority for disbursement as per the said observations and excess amount be remitted to the respondent, subject to tax liability, if any, as per law. Pending final determination of the amount by the Ld. Accounts Officer in execution proceedings, the Hon'ble Authority has already directed to release an amount of Rs.26,67,775/- to the complainants.

15. Stating all this, respondent prayed for dismissal of complaint.

16. 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.

  
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17. It is admitted by learned counsel for the complainants that his clients i.e. the complainants approached the Authority seeking delayed possession charges by filing a complaint (no.399 of 2020). Said complaint was allowed by the Authority vide order dated 12.10.2021 and the respondent was directed to pay interest at the prescribed rate i.e.9.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 11.05.2017 till 24.12.2019 i.e. expiry of two months from the date of offer of possession (24.10.2019). The respondent preferred an appeal which was decided by the Appellate Tribunal on 17.04.2023. Appeal was partly allowed and the order was modified to some extent.

18. 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 and 19 of said Act. Section 18 (3) prescribes for liability of promoter to pay compensation to the allottees, if same (promoter) fails to discharge any other obligation imposed on him under this Act or the rules or

  
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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.

19. 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.**

20. 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 subsection (1) of section 18 provides that where an allottee does not

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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.

21. 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."*

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22. 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.

23. Complaint in hands is thus dismissed. File be consigned to the record room.

Announced in open Court  
today i.e. on **28.04.2026**.




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

Ved Prakash Sharma & anr. vs. M/s Emaar India Ltd.

Present: Mr. Manish Yadav, Advocate for complainants.  
Mr. Dhruv Rohtagi, Advocate for respondent.

Complaint is disposed of, vide separate order today.

File be consigned to record room.

  
(Rajender Kumar)  
Adjudicating Officer,  
28.04.2026