

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

Complaint No. 5945-2023

Date of Decision: 07.04.2026

1. Mrs. Deepika Sethi, 2. Mr. Deepak Kumar Sawhney, 3. Mr. Gurbachan Singh Sawhney, all being filed through Mr. Deepak Kumar Sawhney, power of attorney holder, Rs/o H. No. 842, Ghitorni, Main M. G. Road, Sector-54, Gurugram, 122002.

Complainants

Versus

Emaar India Limited, address of the existing office/residence Emaar MGF Business Park, M. G. Road, Sikandarpur Chowk, Sector 28, Gurgaon, Haryana-122002 IN.

Respondent

APPEARANCE

For Complainants:

Mr. Kuldeep Kumar Kohli, Advocate.

For Respondent:

Mr. Dhruv Rohatgi, Advocate.

ORDER

1. This is a complaint filed by Mrs. Deepika Sethi and others (allottees), under section 31 of The Real Estate (Regulation and Development), Act 2016 (in brief Act of 2016) against M/s. Emaar India Limited (promoter) as per section 2(zk) of Act 2016.

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2. According to complainants, they approached the respondent for booking of Unit/Plot No. GGN-17-0602, 6th floor, Tower No. 17, measuring 1650 sq. yds. in the Project "Gurgaon Greens", Sector-102, Gurugram a group housing colony, on 04.09.2012. The builder's buyer agreement (BBA) was executed between the parties on 31.07.2013. The total sale consideration of the said unit was agreed as Rs.1,26,07,152.00. The total amount paid by the complainants till date was Rs.1,10,61,332.00. The due date of possession as per BBA was 14.06.2016. The delay in handing over possession till date of filing complaint is more than 3 years.

3. That the respondent is in violation of Section 11 (4) of the Act. The respondent company has resorted to unfair practices by way of making incorrect, false and misleading statements over the possession and thereby violated provisions of Section 12 of Act of 2016. The respondent has failed to provide the requisite facilities, amenities and services as agreed at the time of booking. The respondent by using its dominant position is dictating its unreasonable demands to the complainant without showcasing any proficient progress. The respondent had substantially failed to discharge its obligations imposed upon them under the Act and rules and regulations made thereunder.

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4. That as per Section 18 (3)^{of Act of 2016}, if the 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, it is liable to pay such compensation to the allottees in the manner as provided under this Act and as per Section 71 of Act, 2016, an adjudicating officer is empowered to adjudge compensation under Section 12,14,18 & 19 of the Act.

5. Citing facts as mentioned above, the complainants have prayed for following reliefs: -

- I. To award compensation towards mental agony, physical torture and emotional pain suffered by the complainants at the hands of the respondent, to the tune of Rs.5,00,000/-.
- II. To award compensation towards legal fees and expenses for prosecution, to the tune of Rs.3,00,000/-.
- III. To award compensation of Rs.36,80,000/- towards the loss of rent for a period of 7 years and 6 months.
- IV. To pass any other order/reliefs as it may deem fit.

6. The respondent contested the complaint by filing a written reply. It is averred that it (respondent) has already offered possession of the unit booked by the complainants on 18.12.2018, in accordance with the Buyer's Agreement dated 31.07.2013. The respondent has duly fulfilled its obligations under the Buyer's Agreement as well as RERA.

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7. That the present complaint is not maintainable in law or on facts. 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 executed by complainants no. 1 and 3 in favour of complainant no. 2. However, a perusal of the powers of attorney annexed along with the complaint reveals that the authorization is only for the purposes of instituting execution proceedings or a suit. There is no authorization in favour of complainant no. 2 for instituting any complaint before the Hon'ble Adjudicating Officer. Furthermore, the so-called 'power of attorney' annexed along with the complaint does not bear any signatures of witnesses which casts a doubt about the authenticity and legality of the same. Present complaint has not been instituted in accordance with law and is liable to be dismissed, on this ground at the very outset.

8. That although, being in default of the Buyer's Agreement, the complainants were not entitled to any compensation under Clause 16 (c) of the Buyer's Agreement, nevertheless, the respondent has credited compensation amounting to Rs.3,08,799/- against the last demand raised by the respondent.

9. Stating all this, respondent has prayed for dismissal of the complaint.

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10. Both of the parties filed affidavits in support of their claims.
11. I have heard learned counsels appearing for both of parties and perused the record.
12. According to learned counsel for complainants, due date of possession as per BBA was 14.06.2016 but respondent failed to deliver possession at agreed time, causing loss to their clients i.e. complainants. During deliberations, it is agreed by learned counsel for complainants that his clients approached the Authority seeking delay possession compensation for delay of delivery of the possession and that complaint has been allowed by the Authority vide order dated 26.08.2021, copy of which has been put on file. The respondent in that case has been directed to pay the 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. 14.06.2016 till 18.02.2019 i.e. expiry of 2 months from the date of offer of possession (18.12.2018), apart from some other reliefs.
13. 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 regulations made thereunder or in accordance with the terms and conditions of the agreement for sale. Learned counsel claims that respondent (promoter) failed to discharge its obligation of handing over possession, in agreed time as per terms and conditions of BBA and hence, liable to pay compensation.

14. 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.**

15. 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. The parliament did not intend to provide compensation other than DPC in case allottee does not intend to withdraw from the project.

16. 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-----;

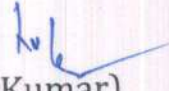
“13.9. If were closely examine the above two provisions, it comes out that in a case where the Allottee exists the projects, the Act expressly provides INTEREST AND COMPENSATION both, but in cases where the Allottee tends to stay in the project the Allottee is only entitled for interest of every month 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.”

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17. 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.

18. File be consigned to record room.

Announced in open court today i.e. on 07.04.2026.


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