

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 5754 of 2024
Date of complaint : 22.11.2024
Date of order : 07.04.2026

Vivek Mohan Kaushal and Puja Kaushal,
Both R/o: - Doordarshan Welfare Organisation,
Flat No. 1204, Plot No. 8, Sector-45, Gurugram-122003. **Complainants**

Versus

Emmar India Limited.
Having Registered Office at: - Emmar MGF Business Park,
Mehrauli Gurgaon Road, Sector-28, Gurugram. **Respondent**

CORAM:

Arun Kumar

Chairman

APPEARANCE:

Varun Chugh (Advocate)
Dhruv Rohatgi (Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	"Emerald Floors Premier-II, Sector 65, Gurugram, Haryana
2.	Nature of project	Residential
3.	DTCP License no.	06 of 2008 dated 17.01.2008 valid up to 16.01.2025
4.	Name of licensee	Active Promoters Pvt. Ltd and 4 others
5.	RERA Registered/ not registered	Not Registered
6.	Unit no.	EFP-II-50-0401 (As per page no. 23 of the complaint)
7.	Unit area	1600 sq. ft. (Super Area) (As on page no. 23 of the complaint)
8.	Date of provisional allotment	08.06.2010 (As per page no. 16 of the complaint)
9.	Date of execution of buyer's agreement with original allottee	04.09.2010 (As per page no. 19 of the complaint)
10.	Agreement to sell between the original allottees and the complainants	10.09.2010 (As per page no. 141 of the reply)
11.	Possession clause	<p>11. POSSESSION</p> <p>(a) Time of handing over the Possession</p> <p><i>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this buyer's Agreement, and not being in default under any of the provisions of this buyer's Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the</i></p>

		<p><i>possession of the unit within 36 months from the date of execution of this buyer's agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the occupation certificate in respect of the unit and/or the project.</i></p> <p>(Emphasis supplied) (As on page no. 36 of the complaint)</p>
12.	Due date of possession	<p>04.12.2013 (Note: Due date to be calculated 36 months from the date of execution of buyer's agreement i.e., 04.09.2010 plus grace period of 3 months)</p>
13.	Total sale consideration	<p>Rs.78,13,000/- (As per schedule of payment on page no. 54 of the complaint)</p>
14.	Amount paid by the complainant	<p>Rs.84,93,515/- (As per SOA on page no. 55 of the complaint)</p>
15.	Occupation certificate	<p>11.11.2020 (As per page no. 156 of the reply)</p>
16.	Offer of possession	<p>16.11.2020 (As per page no. 159 of the reply)</p>

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the property in question i.e. floor bearing No. EFP-II-50-0401 admeasuring 1600 sq. ft., along-with car parking space in the project known as "Emerald Floors Premier, Phase - II" situated at Sector-65, Gurugram, Haryana was booked by one Sh. Anand Rawat and Smt. Savitri Rawat as co-applicant, in the year 2010. Thereafter, on 04.09.2010, the above-named allottees entered into builder buyer's agreement with the respondent by virtue of which the respondent allotted the said unit to them.

- II. That subsequently, the complainants entered into an agreement to sell with the above-named allottees and the property in question got transferred in the name of the complainants and on 01.11.2010, endorsement was made to this effect in the builder buyer's agreement, by the respondent.
- III. That the total cost of the floor was Rs. 84,78,090/- only and since it was a construction linked plan, hence the payment was to be made on the basis of schedule of payment provided by the respondent.
- IV. That the complainants had already paid the entire amount towards the cost of the property and nothing is due and payable to the respondent.
- V. That in the said builder buyer's agreement dated 04.09.2010, the respondent has categorically stated that the possession of the said apartment would be handed over to the complainants within 36 months from the date of execution of buyer's agreement, excluding a further grace period of 3 months.
- VI. That the said buyer's agreement is totally one sided which impose completely biased terms and conditions upon the complainants, thereby tilting the balance of power in favour of the respondent, which is further manifest from the fact that the delay in handing over the possession by the respondent would attract only a meagre penalty of Rs. 5 per sq. ft. on the super area of the flat, on monthly basis, whereas the penalty for failure to take possession would attract holding charges of Rs. 50/- per sq. ft. and 24% penal interest on the unpaid amount of instalment due to the respondent.
- VII. That in all these years, the complainants also visited at the site and observed that there are serious qualities issues with respect to the construction carried out by respondent.

- VIII. That, the respondent has breached the fundamental term of the contract by the inordinately delaying in delivery of the possession by several years.
- IX. That the complainants vide their emails addressed to the respondent had asked to indemnify them, for the delay in handing over the possession of the floor/apartment but the respondent company had indemnified the complainant as per the buyer's agreement and had only offered a meagre sum of Rs 5,95,726/-. In fact, the complainants through their emails had demanded compensation as per the RERA regulations besides seeking some more time to take physical possession as the preparation of SPA is a time taking process, but the respondent company had miserably failed to accede to their legitimate request and has turned a deaf ear.
- X. That when no heed was paid to the request of the complainants, they were left with no other option but to file a complaint before the Authority which was registered and numbered as 4754 of 2020 seeking directions to the respondent to pay delay possession compensation to the complainants for inordinate delay in offering the possession of the unit in question. Subsequently, the Authority vide its final order/judgment dated 12.08.2021 was pleased to allow the complaint and directed the respondent to make the payment of Interest on account of delay in handing over the possession to the complainants as per the prescribed rate of Interest of 9.30% from the due date of possession i.e. 04.09.2013 till 16.01.2021.
- XI. That against the above mentioned judgment, the respondent had preferred an appeal which is pending adjudication before the Hon'ble Real Estate Appellate Tribunal, Chandigarh and despite repeated requests and reminders by the complainants, the respondent has

deliberately withheld the physical possession of the unit in question, hence the present complaint is being filed seeking direction to the respondent to handover the physical possession of the unit in question, in accordance with the provisions of the Act.

- XII. That the complainants, without any default, had been timely paying the instalments towards the property, as and when demanded by the respondent. The respondent had promised to complete the project by December, 2013 including the grace period of three months, however, the physical possession of the unit in question has still not been given to the complainants which resulted in extreme kind of mental distress, pain and agony to the complainants.
- XIII. That the respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession. The respondent had committed gross violation of the provisions of section 18 (1) of the Act by not handing over the timely possession of the flat in question and not giving the interest and compensation to the buyer as per the provisions of the Act.
- XIV. That, the respondent has committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as mentioned in preceding paragraph. The project has been inordinately delayed. The respondent has resorted to misrepresentation. The complainants, therefore, seeks direction to the respondent to hand over the physical possession of the property in question.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- I. Direct the respondent to handover possession of unit to the complainants.
 - II. Direct the respondent to pay cost of litigation.

5. On the date of hearing, the Authority explained to the respondents/promoter about the contraventions as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent vide its reply has contested the complaint on the following grounds:

- i. That the present complaint is barred by limitation and by the principles of res judicata. The present complaint is also barred by Order II Rule 2 of the Code of Civil Procedure.
- ii. That Mr. Anand Rawat and Mrs. Savitri Rawat approached the respondent in the year 2010 for purchasing an independent unit in its upcoming residential project "Emerald Floors Premier" situated in Sector - 65, Urban Estate, Gurugram, Haryana. The original allottees vide application form dated 15.05.2010 applied to the respondent for provisional allotment of a unit in the project. In pursuance of the same, the original allottees were allotted a unit bearing No. EFP-II-50-0401 in the project of the respondent vide provisional allotment letter dated 08.06.2010. Thereafter, a buyer's agreement dated 04.09.2010 was executed between the original allottees and the respondent. Clause 13 of the buyer's agreement provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement. It also stipulates that in case of delay caused due to non-receipt of occupation certificate, completion certificate or any other permission/sanction from the competent

- authorities, no compensation or any other compensation shall be payable to the allottees.
- iii. That in 2010, the complainants purchased the unit in question from the original allottees with full notice and knowledge of the status of the construction on the date of purchase. The complainants executed various transfer documents including affidavit and indemnity whereby the complainants agreed and undertook not to claim any compensation for delay in delivering possession. It was categorically conveyed to the original allottees that the respondent was not in a position to estimate as to when the construction would commence. Consequently, the complainants who had stepped into the shoes of the original allottees were aware right at the very beginning that time was not the essence of the contract in so far as delivery of possession was concerned.
- iv. That the complainants had stepped into the shoes of the original allottees and therefore, all the rights and liabilities of the original allottees were transferred to them. It is submitted that the original allottees were not entitled to any compensation or any interest in delay, if any, in offering possession of the unit in terms of the buyer's agreement on account of default of terms and conditions thereof by them.
- v. That the respondent had completed construction of the unit/tower and had made an application dated 16.07.2020 to the competent authority for issuance of the occupation certificate. Upon receipt of the occupation certificate dated 11.11.2020, possession of the unit was offered to the complainants vide offer of possession letter dated 16.11.2020. The complainants were called upon to make payments of balance sale consideration, complete the necessary formalities and

documentation so as to enable the respondent to hand over possession of the unit to the complainants. It is pertinent to state that the compensation amounting to Rs.5,95,726/- in terms of the buyer's agreement was also credited to the account of the complainants even though complainants, being in default of the buyer's agreement, are not entitled to any compensation from the respondent. However, instead of clearing their outstanding dues and taking possession of the apartment, the complainants started raising absolutely frivolous and unwarranted demands with the respondent.

- vi. That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is submitted that the project has been delayed on account of several reasons which were/are beyond the power and control of the respondent.
- vii. That several allottees, including the complainants have defaulted in timely remittance of payment of instalments which was an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. It is submitted that despite the default caused, the respondent applied for grant of occupation certificate in respect of the said unit on 16.07.2020 and the same was thereafter issued by the concerned statutory authority on 11.11.2020. Thereafter, the complainants were offered possession of the unit in question through letter of possession dated 16.11.2020. They were called upon to remit the balance payment including delayed payment charges to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainants. It is submitted that they delayed the procedure of taking the possession of the said unit on their own account.

- viii. That the respondent earnestly requested the complainants to obtain possession of the unit in question and further requested the complainants to execute the conveyance deed in respect of the unit in question after completing all the formalities regarding delivery of possession. However, the complainants did not pay any attention to the legitimate, just and fair requests of the respondent and threatened the respondent with the institution of unwarranted litigation, but all requests of the respondent fell in the deaf ears of the complainants.
- ix. That the complainants are defaulting parties who have delayed in remitting timely instalments. The complainants approached the Authority for compensation despite knowing the fact that the complainants themselves have defaulted in making timely payment. The complainants filed a complaint bearing No. HRR/GMM/CRN/4754/2020, which was decided vide order dated 12.08.2021 wherein it was held that *"the Respondent is directed to pay interest at the rate of 9.30% per annum on the amount paid by the complainant(s) from the due date of possession, i.e., 04.09.2013 till the date of handing over of the possession of the unit or upto two months from the valid offer of possession if possession is not taken by the complainant(s), whichever is earlier."* In compliance with the order passed, the complainants filed an execution bearing No. E/6861/2022, which is pending adjudication and listed on 07.08.2025. Aggrieved by the order passed by the hon'ble authority; the respondent has filed appeal before the Appellate Tribunal bearing No. HREAT-29-2022 and the same is also pending adjudication. It submitted that the complainants have consciously and maliciously refrained from obtaining possession of the unit in question. It is further submitted that the complainants have filed the captioned frivolous complaint

with false averments, only with a malafide intention to make illegal enrichment at the cost of the respondent. Since the captioned complaint is filed without any cause of action, the same is liable to be dismissed at the outset.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Maintainability of complaint:

8. In the present complaint, the complainants intend to continue with the project and are seeking direction to the respondent to handover the possession of unit. Vide proceedings dated 07.04.2026, the counsel for the respondent stated that the complainants have previously filed a complaint bearing no. CR/4754/2020 before the Authority vide which delay possession charges was allowed to them by the Authority. Therefore, another complaint against the said matter is not maintainable before the Authority and is liable to be dismissed. On contrary, the counsel for the complainants stated that the previous complaint was disposed of with directions to the respondent to pay the delay possession charges but there were no directions to the respondent to handover the physical possession of the unit hence the present complaint has been filed for separate cause of action.
9. After considering the documents available on record as well as submissions made by the parties, it is observed that the matter in issue between the parties has already been heard and decided by the Authority vide order dated 12.08.2021 whereby, delay possession charges was allowed to the complainants. It is further noted that the direction for grant of delay possession charges inherently encompasses



a direction with respect to possession as the same having been awarded on account of delay in handing over possession. Consequently, the present complaint is not maintainable before the Authority as is barred by the principle of res-judicata as the matter in issue between the parties has already been heard and decided by the Authority vide order dated 12.08.2021 in the former complaint bearing no. CR/4754/2020. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be fetched to an extent that basic principles of jurisprudence are ignored. Therefore, subsequent complaint on same cause of action is barred by the principle of res-judicata as provided under Section 11 of the Code of Civil Procedure, 1908(CPC). Section 11 CPC is reproduced as under for ready reference:

"11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—*The expression "former suit" shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.*

Explanation II.—*For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.*

Explanation III.—*The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.*

Explanation IV.—*Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.*

Explanation V.—*Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.*

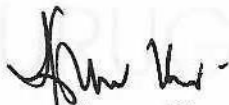
Explanation VI.—*Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others,*

all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating .

1[Explanation VII.—*The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.*

Explanation VIII. —*An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]”*

10. The Authority is of view that though the provisions of the Code of Civil Procedure, 1908 (CPC) is, as such, not applicable to the proceedings under the Act, save and except certain provisions of the CPC, which have been specifically incorporated in the Act, yet the principles provided therein are the important guiding factors and the Authority being bound by the principles of natural justice, equity and good conscience has to consider and adopt such established principles of CPC as may be necessary for it to do complete justice. Moreover, there is no bar in applying provisions of CPC to the proceedings under the Act if such provision is based upon justice, equity and good conscience. Thus, in view of the factual as well as legal provisions, the present complaint stands dismissed being not maintainable. File be consigned to the registry.


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.04.2026