

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

Complaint No. 5851-2023

Date of Decision: 20.07.2026

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:

Mr. Manish Yadav, Advocate.

For Respondent:

Mr. Dhruv Rohatgi, Advocate.

ORDER

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

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2. According to complainants, they are peace loving and law-abiding persons and the respondent is builder/developer, who made tall claims about their project "Emerald Floor Premier II" situated at Emerald Estate, Sector-65, Gurugram. Present complaint is filed by them (complainants) being aggrieved by the highly unprofessional attitude adopted by the respondent and defective service given by it (respondent) despite complete timely payment made on behalf of the complainants.

3. That on 18.05.2010, they (complainants) booked a flat/apartment admeasuring 1975 Sq. Ft. and paid Rs.5,00,000/- vide Cheque no. 159352 dated 18.05.2010 as booking amount and signed a pre-printed application form. Flat was purchased under the construction link payment plan for sale consideration of Rs.1,05,72,389/- including B.S.P., E.D.C., I.D.C. and P.L.C.

4. That on 03.08.2010, respondent issued a provisional allotment letter in favour of the complainants by allotting Unit No. EFP-II-55-0301, Apartment No.0301, 3rd Floor, Tower No.55 admeasuring 1975 Sq. Ft. (approx.) super area in their project and on 03.08.2010 a pre-printed, arbitrary, unilateral Buyer's Agreement/ Agreement to sell (BBA) was executed between the parties.

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5. That the complainants purchased above said unit for total sale consideration of Rs.1,05,72,389/- and the same was got signed by the complainants. The possession in terms of clause 11 (a) of BBA, was to be delivered within 36 months from the date of execution of BBA along with a grace period of 3 months. Effectively the possession of the apartment was to be delivered on or before 03.08.2013.

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 19.11.2020, the respondent received the Occupation Certificate from the competent Government agencies and the complainants were issued the offer of possession letter dated 19.11.2020 by the respondent. They (complainants) were asked to make the balance payment by 10.12.2020. They objected to the same being lesser than 30 days' time as per BBA to carry out the formalities and they wrote an email in protest to the same.

7. That on 31.03.2022, the complainants were finally handed over actual physical possession of the flat/apartment/unit, on the orders of the Appellate Tribunal. But despite taking the actual physical possession from the respondent, the complainants reserved their right for further claims. The complainants made

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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.

8. That despite making all payments as per demands of the respondent, the complainants were not delivered possession of their apartment. The respondent kept on delaying delivery of the possession of the apartment. The respondent has adopted serious unfair trade practice by failing to deliver the possession of the unit booked.

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

- i. to direct the respondent for compensation for not building the Servant Room and Toilet/Bath facilities, at the rate of $10572390/1975 = \text{Rs.}5353/\text{sq. ft.} = 5353 \times 56 = \text{Rs.}2,99,774.00$ plus interest on this amount from 03.11.2013 till realisation;
- ii. to direct the respondent for compensation for loss of rental income from 03.11.2013 till 31st March 2022 @ rate of Rs.41,480/- (Average Median Rent per month) * 101 months total amounting to Rs.41,89,480/- as prevalent in the vicinity of the project and allotted unit.
- iii. to direct the respondent to refund the amount of money received i.e. Rs.1,91,548/- as Holding charges on 12.03.2022 from the complainant along with prescribed rate of interest till realisation.


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- iv. to direct the respondent for compensation of Rs.10,00,000/- for the mental harassment and agony suffered at the hands of the respondent.
- v. to direct the respondent for cost of the ligations of Rs.1,80,000/- 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.
- vi. any other order which this Court may deem fit and proper be also passed in the interest of justice.

10. The respondent contested claim of complainants by filing a written reply. It is denied that the subject matter of the instant claim falls within the jurisdiction of the Adjudicating Officer, as it (respondent) has already delivered physical possession of the unit booked by the complainants on 31.03.2022. It (respondent) has duly fulfilled its obligations under the Buyer's Agreement as well as RERA Act, 2016.

11. That 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, they (complainants) started defaulting in payments right from the very beginning and consequently became liable for payment of delayed payment charges. Various demand letters and reminders for

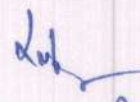

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payment were issued by the respondent calling upon the complainants to make payment in accordance with the applicable payment plans.

12. That the contractual relationship between the complainants and the respondent is governed by the terms and conditions of the Buyer's Agreement dated 03.08.2010. In the present case, the complainants are defaulters, who have failed to make timely payment of sale consideration as per the payment plan. On account of delay and defaults by the complainants, the due date for delivery of possession stands extended in accordance with Clause 11(b)(iv) of the Buyer's Agreement, till payment of all outstanding amounts to the satisfaction of the respondent.

13. That the complainants, being in default, are not entitled to any compensation in terms of Clause 13(c) of the Buyer's Agreement. Furthermore, in terms of Clause 13(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.

14. 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 apartment/tower and made an application to the competent authority for issuance of the


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Occupation Certificate on 20.07.2020. Occupation Certificate was issued by the competent authority on 11.11.2020. Upon receipt of the occupation certificate, possession of the apartment was duly offered to the complainants. A sum of Rs.7,46,712/- was credited in favour of the complainants as delayed payment interest. The complainants took possession of the unit on 31.03.2022.

15. That Hon'ble Appellate Tribunal was pleased to dispose of the appeal in terms of the aforesaid observations while directing that the amount of Rs.59,32,377/- 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.54,68,105/- to the complainants.

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

17. 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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18. Contending that despite making payments as demanded by the respondent, they i.e. the complainants were not delivered possession of their apartment by the respondent, rather the latter kept on delaying delivery of possession, the complainants have prayed for compensation as described earlier. During deliberations, it was pointed out that the complainants approached the Authority through complaint No.989 of 2020 seeking delay possession compensation and the Authority vide order dated 14.12.2020 allowed said complaint. The respondent has been 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. 03.11.2013 till the handing over of possession.

19. Aggrieved by the said order, the respondent filed an appeal i.e. Appeal No.280 of 2021 before the Appellate Tribunal and the Tribunal disposed of said appeal vide order dated April 17, 2023. Admittedly, by the order of Appellate Tribunal, possession of subject unit has also been handed over to the allottees/complainants.

20. 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:

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(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.**

21. 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.

22. 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


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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."

23. Similar was finding of Haryana Real Estate Appellate Tribunal in case "TATA Housing Development Company Limited vs. Nitin Singhal & Surendra Kumar Singhal, Appeal No.737 of 2023 decided on February 17,2026.

24. When complainants have already been allowed delayed possession compensation by the Authority for delay in handing over possession of allotted unit, no compensation in the name of loss of rental income as claimed by the claimants cannot be granted. Request in this regard is declined.


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25. The complainants have prayed for compensation for not constructing servant room and toilet/bath facilities. As stated above, the complainants have already accepted the possession of the unit. According to learned counsel for the respondent, the complainants submitted '**Unit Handover Letter**' stating that they took possession of the unit and "**the same is as per the sanctioned plan**"..... "**The complainants duly inspected the unit before taking possession and acknowledged that it was to their satisfaction**". This fact is not controverted during deliberations. Considering all this, there is no reason to allow any compensation in this regard.

26. The complainants further prayed for direction to the respondent to refund the amount of money received i.e. Rs.1,91,548/- as holding charges.

27. While deciding appeal filed by the present respondent, the Appellate Tribunal in its order dated 07.03.2022 noted as:

"Learned counsel for the appellant has stated that the appellant is ready to deliver the possession of the allotted unit to the respondent. However, the dispute regarding holding charges may be kept pending and to be decided along with the present appeal."

28. All this makes it clear that the issue of holding charges was seized by the Appellate Tribunal. According to learned counsel


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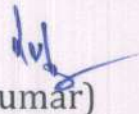
for the complainants, no finding was given by Appellate Tribunal, on that issue. Without making any comment, even if said fact was true, the complainants had remedy anywhere else, they cannot be allowed to agitate same issue again before this forum. No reason to pass any order on this issue.

29. The complainants have further sought compensation of Rs.10 lakhs for mental harassment and agony and again Rs.1,80,000/- for cost of litigation.

30. When the complainants are not found entitled to any compensation due to reasons described above, I do not think it proper to allow any compensation in the name of mental harassment and agony or litigation expenses. Prayer in this regard is also disallowed.

Both of parties to bear their own costs. Complaint in hands is thus dismissed. File be consigned to the record room.

Announced in open Court
today i.e. on **20.07.2026**.

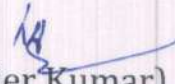

(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate
Regulatory, Gurugram.

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

Present: Mr. Manish Yadav, Advocate for the 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,
20.07.2026