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

Complaint No. : 2495 of 2023
Date of Decision : 13.11.2026

Kuldeep Kumar Kohli, resident of RZ-200B, Street No.3, Ram Chowk, Sadh Nagar Part-I, Palam Colony, New Delhi-110045.

.....Complainant

Versus

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

.....Respondent.

APPEARANCE

For Complainant	:	**Mr. K. K. Kohli in person**
For Respondent	:	**Mr. Dhruv Rohtagi, Advocate.**

ORDER

This is a complaint filed by Mr. Kuldeep Kumar Kohli (allottee), Section 31 of The Real Estate (Regulation and

AO

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

2. The brief facts of the complainant' case are that on 09.06.2009, he purchased a residential unit No.EHF-350-I-GF-130 having carpet area 292.64 sq. mt. in the project "Emerald floors at Emerald Hills, Sector-65, Gurugram, being developed by the respondent. On 03.07.2009 allotment letter was issued in his favour by the respondent. An amount of Rs.22,63,500/- was received by the respondent from him (complainant) from 07.06.2009 to 12.08.2009. A Builder Buyer Agreement (BBA) was executed between the parties on 28.05.2010 i.e. after around one year from the date of receipt of first payment. Total sale consideration of the said unit was agreed as Rs.79,87,870/-. The total amount paid by the complainant was Rs.79,91,076/-. Due date of handing over of possession was 24.08.2012. However, possession was offered on 29.05.2017 with many demands, which were not part of BBA.

3. That on 10.09.2018 possession of the subject unit was handed over to him(complainant) subject to removal of all seepages after signing the MOU. The entire flat was flooded with

AO

seepages and the same remained inhabitable till 31st March, 2020. That he (complainant) lived in a rented house from 28.08.2012 till 31.03.2020 and paid monthly rent of Rs.35,000/- for 16 months, Rs.38,000/- from 01.01.2014 to 31.12.2015, Rs. 42,000/- from 01.01.2016 to 31.12.2018 and Rs.45,000/- from 01.01.2019 to 31.03.2020.

4. Contending all this, the complainant has prayed for compensation of Rs.5,00,000/- towards mental agony, physical torture and pain, resulting to complainant by behaviour of respondent and Rs.3,00,000/- as compensation to pursue the case before the Authority as well as before the Adjudicating Officer and Rs.44,00,833.33 on account of pecuniary damages including rent, to be paid by the respondent.

5. The respondent contested the complaint by filing a written reply. It is averred that present complaint is not maintainable as the complainant has been enjoying the unit in question without any demur/protest. Possession of the subject unit was offered to the complainant on 05.10.2016 and unit was handed over on 20.07.2018. Conveyance Deed has been executed on 07.08.2018. That after conclusion of the entire transaction on the

AO

execution of the Conveyance Deed and on completion of all obligations by it (respondent), the complainant chose to remain silent for such a long period and has approached the Authority now to extort money.

6. That present complaint is barred by limitation as the limitation for filing the present complaint expired on 06.08.2021. That it (respondent) had already credited a sum of Rs.21,60,411/- as compensation for the delay in offering the possession of the unit. Once the complainant has been granted compensation in the nature of delay interest, he is estopped from raising any further additional claim of compensation. That at the time, when it (respondent) extended the waiver of delay payment charges to the complainant, he had once again executed an Indemnity-cum-Undertaking dated 26.08.2014 waiving his rights to claim any further amount. There is no default or lapse on its part, rather it is the complainant who was in clear breach of the terms of the Agreement by not making timely payments.

7. Contending all this, the respondent has prayed for dismissal of complaint.

AO

8. 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.

9. As described above, the complainant has sought compensation of Rs.5 lakhs towards mental agony, physical torture and pain, Rs.3 lakhs as compensation to pursue the case before the Authority as well as before the Adjudicating Officer and again Rs.44,00,833.33 on account of pecuniary damages including rent paid by him. It is submitted by the complainant that even if in the relief clause, he did not mention about compensation against the respondent for not executing BBA in time. He was constrained to pay sum of Rs.22,63,500/- till 15.09.2009 out of total sale consideration of Rs.75,45,000/-. BBA was executed by the respondent only on 28.05.2010 i.e. after about 8 months. While as per law, the respondent could not demand more than 10% of sale consideration unless he executed BBA.

10. It is further plea of the complainant that although, the respondent sent offer of possession on 05.10.2016, but it was not a valid offer of possession and the respondent compelled him to sign Indemnity bond-cum-Undertaking, which he was not obliged to

AO

sign. Moreover, there were deficiencies in the unit and huge seepage on the wall. A photograph of wall has been annexed with the affidavit in evidence. Again, even if offer of possession was sent on 05.10.2016, but it was not a valid offer of possession. The respondent sent a letter on 29.05.2017 i.e. Ref/EH/705073/20170529111821803, titled as "Handover Advice letter" mentioning as "your aforementioned home is now ready for physical possession as per the terms and conditions of the Buyer's Agreement". All this shows that actual physical possession was not handed over till 29.05.2017, due to delay in handing over of possession, he suffered loss of stamp duty of Rs.72,300/- as Stamp duty was increased from Rs.5,06,100/- to Rs.5,78,400/-. This fact is clear from letter of respondent No. Ref/705073/120112017071800 dated 12.01.2017. Further, the respondent informed him about the change of lay out plan dated 13.08.2017. The respondent collected HVAT from him (complainant), which was not actually payable by him.

11. After arguments were concluded, the complainant filed an application with a prayer to consider these facts, while allowing compensation even if no compensation amount was mentioned in

AO

the relief clause as described above. The complainant relied upon case titled as ***Ram Sarup Gupta (dead) by LRs. Vs. Bishun Narain Inter College (1987) 2 SCC 555***, wherein it was held that pleadings are required to be construed liberally and that a pedantic approach ought not to be adopted. The object of pleadings is to ensure that the opposite party is made aware of the case which it is required to meet and not to defeat a substantive claim on account of an inelegant or technically defective formulation. Again, in a case titled as ***"Nagubai Ammal & Ors Vs. B. Shama Rao & Ors. AIR 1956 SC 593***, the Apex Court explained that the object of pleadings is to enable the opposite party to know the case which it has to meet. Thus, where the substance of a claim is disclosed in the pleadings and the opposite party has had full notice and opportunity to contest the same, a purely technical objection cannot ordinarily be permitted to defeat the substantive adjudication.

12. On the other hand, learned counsel for the respondent contended that when the complainant has already been allowed delay possession compensation (DPC) by the Authority, same is not entitled for any further compensation.

AO

13. Admittedly, present complainant filed a complaint before the Authority i.e. complaint No.CR/3175/2021, which was decided by the Authority vide order dated 31.05.2022. During deliberations, the complainant did not dispute the fact that on his earlier complaint, the Authority has already allowed DPC.

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 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

AO

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 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."***

AO

17. 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.

18. In this way, an allottee is not entitled for compensation when the same has already been allowed DPC, but subject that relief of compensation is based only on the plea of delay in handing over of possession. It is to be noticed here that the complainant has sought compensation not only on ground of delay in handing over of possession, but on some other grounds also, as described above.

19. I agree with the complainant alleging that even if in the relief clause, he has not sought specific amount of compensation for breach on the part of respondent, but when he has already clarified this fact in the body of the complaint, this forum is obliged to consider the same, despite not claiming specific amount of compensation in the relief clause.

20. ~~The receipt~~ Receiving of an amount of Rs.22,63,500/- by the respondent from the complainant before execution of the BBA has not been denied during deliberations. As per Section 13(1) of The

AO

Act of 2016, the promoter/respondent was obliged to execute and register BBA on receipt of 10% of the total sale consideration. Admittedly, the respondent had received Rs.22,63,500/- out of total sale consideration of Rs.75,45,000/- before execution and registration of BBA, which was more than 10%. All this was contrary to law and hence the respondent is liable to compensate the complainant, on this count.

21. Although the complainant has sought compensation in the name of rent at the rate of Rs.50,000/- per month stated to be market rent for the period of nine months totalling amount of Rs.4,50,000/-. I do not find it proper to allow compensation equal to rent for not executing BBA, within the time stipulated by law. The complainant was constrained to pay about Rs.15,09,000/-i.e. more than 10% of sale consideration before execution of BBA. The complainant is allowed a sum of Rs. 1,00,000/- on this count, which may be tentative amount of interest on excess amount.

22. During deliberations, it was not denied that amount of stamp duty was increased from the date of offer of possession sent by the respondent till the actual handing over of possession. Moreover, all this is clear from the letter issued by the respondent

AO

mentioned above. The respondent is directed to refund the amount of extra payment made by the complainant for purchase of stamp duty for registration of Conveyance Deed along with interest @ 11% per annum from the date, the same (respondent)received extra amount of stamp duty, till this amount is repaid.

23. In the letter of taking possession, copy of which is already on the record, it is mentioned that there was seepage in the house. However, the complainant did not adduce any evidence to verify as what amount was spent by him to remove said defect. The complainant is allowed nominal compensation of Rs.50,000/- on this count.

24. So far as charging of HVAT and other charges are concerned, it is pointed out that all these issues have already been dealt by the Authority, while deciding aforementioned complaint filed by present complainant. No reason to allow any compensation in this regard. The complainant did not adduce any evidence to prove that lay out plan was changed by the respondent.

25. The complainant has prayed for compensation of Rs.5 lakhs towards mental agony, physical torture and pain caused to him due to ~~poor~~ said behaviour of the respondent. Apparently, it caused

AO

mental agony and harassment to the ~~occupant~~ allottee/complainant when his dream house was found unfit for human dwelling. The amount of Rs.5 lakh appears to be excessive. The complainant is allowed a sum of Rs. One lakh for mental agony, physical torture and pain.

26. The complainant has requested for compensation of Rs.3 lakhs to pursue the case before the Authority as well as before this forum. The complainant himself is an advocate. He argued his case on his own. Despite all this, he is allowed Rs.50,000/- as cost of litigation in this case. However, no reason to allow litigation expenses for a complaint filed before the Authority.

27. The respondent is directed to pay the aforesaid amount along with interest at the rate of 11% per annum from the date of this order, till realization of amount, except the amount of stamp duty, which is to be paid along with interest from the date, the same was collected by it (respondent) till its repayment.

This complaint stands disposed of accordingly. File be consigned to the record room.

Announced in open Court.
today i.e. **on 13.11.2026.**

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

Present: Complainant Mr. K. K. Kohli, in person.
Mr. Dhruv Rohtagi, Advocate for the respondent.

Order is not ready due to overwork. To come on 13.11.2026 for order.

(Rajender Kumar)
Adjudicating Officer,
09.10.2026

Present: Complainant Mr. K. K. Kohli, in person.
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,
13.11.2026