

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

Complaint No. :5388-2023

Date of Decision: 26.05.2026

1. Dr. Kumar Rajiv son of Hanuman Prasad,
 2. Dr. Sudhi Rajiv wife of Dr. Kumar Rajiv,
- both residents of M-4, Maharaja Hari Singh Nagar, Residency Road,
Jodhpur-342001, Rajasthan.

.....**Complainants**

Versus

M/s Adani M2K Projects LLP, Ground Floor, Adani House, Plot No.83,
Sector-32, Institutional Area, Gurugram-122001, Haryana.

.....**Respondent.**

APPEARANCE

For Complainants:

Mr. Sharaj Mridul, Advocate

For Respondent:

Mr. Kalyan Kumar, Advocate

ORDER

This is a complaint filed by Dr. Kumar Rajiv & Dr. Sudhi Rajiv (allottees) under Section 31 of The Real Estate ((Regulation and Development) Act, 2016 (referred as "Act of 2016") against M/s Adani M2K Projects (promoter).

2. Briefly stated, according to complainants, on 18.10.2012 they applied for a unit in the residential project "Oyster Grande" Sector-102/102A, village Khedki Mazra, Gurugram, being developed by the

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respondent and paid booking amount of Rs.27 lakhs. It was promised to them (complainants) that the project will be completed within a period of four years. Due date of delivery was thus 13.09.2017.

3. That on 14.09.2013, the respondent issued Buyers Agreement for an Apartment J-1103, 11th Floor, admeasuring 2550 Sq. ft. Super Area and 1844 Sq. ft. Apartment Area, along with 2 covered basement car parking for sale consideration of Rs.1,48,27,377. The Construction Linked Payment Plan indicated total cost of the Apartment (inclusive of all charges) was Rs. 1,63,15,227. They (complainants) have paid a sum of Rs.1,56,07,113/- i.e. more than 95% of the agreed payment towards the Apartment, but the respondent did not even start construction of the project.

4. That on 16.02.2019, the respondent informed them (complainants) that the construction of the Apartment was nearly complete and it (respondent) demanded Rs.23,06,059/-, but when the complainants visited the site, they found that the project was far from completion. In the year 2021, the Authority issued notice to the respondent for not getting the project registered with it (Authority). The respondent issued demand letters and pre-cancellation notices to the complainants demanding Rs.29,86,472/- despite RERA certificate remained pending.

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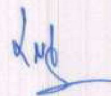
5. That they (complainants) preferred a complaint bearing No.2408/2021 before the Authority seeking possession of their unit. The Authority vide its order dated 20.04.2023 directed the respondent to pay DPC and also to handover the possession of the allotted unit to them (complainants) complete in all respects, as per specifications of Buyer's Agreement, but to of no effect.

6. Contending all this, the complainants have prayed for following reliefs:

- i) to direct the respondent to pay a sum of Rs.75,000/-as compensation towards litigation charges of the proceedings.
- ii. to direct the respondent to deposit the above amount with the Authority till the pendency of the present complaint.

7. The respondent contested the complaint by filing a written reply. It is averred that the present complaint is not maintainable being barred by the principle of Res-judicata. In the order dated 20.04.2023, passed by the Authority, there was no direction relating to the relief of Rs.75,000/- towards charges of present proceedings.

8. That it (respondent) has already taken steps for compliance of the order dated 20.04.2023 passed by the Authority, but due to non-payment of outstanding dues by the complainants, the respondent has got hindrance in compliance of the order.


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9. Stating all this, the respondent prayed for dismissal of complaint, with exemplary costs.
10. 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.
11. According to learned counsel for complainants, due date of possession was 14.03.2018 but respondent failed to deliver possession at agreed time, causing loss to his 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 20.04.2023, copy of which has been put on file. The respondent in that case has been directed to pay interest at the prescribed rate i.e. 10.70% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 14.03.2018 till the date of offer of possession (16.02.2019) plus two months i.e. 16.04.2019, apart from some other reliefs.
12. 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

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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.

13. 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.**

14. It is worth mentioning here that complainants did not wish to withdraw from the project but prayed for delayed possession

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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.

15. 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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16. 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.

17. File be consigned to record room.

Announced in open court today i.e. on 26.05.2026.


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

Dr. Kumar Rajiv & Anr. Vs. M/s. Adani M2K.

Present: Mr. Sharaj Mridul, Advocate for complainants.
Mr. Kalyan Kumar, Advocate for respondent.

Complaint is disposed of, vide separate order today.

File be consigned to record room.



(Rajender Kumar)
Adjudicating Officer,
26.05.2026