

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

Date of decision: 17.08.2022

| NAME OF THE BUILDER | | Emmar MGF Land Limited | |
|---------------------|--------------|--|---|
| PROJECT NAME | | Gurgaon Greens, | |
| S. No. | Case No. | Case title | APPEARANCE |
| 1 | CR/4932/2020 | Mrs. Anuradha V/S Emaar MGF Land Limited | Shri Jagdeep Kumar Shri JK Dang & Ishaan Dang |
| 2 | CR/437/2021 | Sumitra Sehrawat and Parveen Sehrawat V/S Emaar MGF Land Limited | Shri Jagdeep Kumar Shri JK Dang & Ishaan Dang |

CORAM:Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal**Chairman
Member****ORDER**

1. This order shall dispose of all the 2 complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, The Gurgaon Greens in sector 102, Gurugram (group housing complex) being developed by the same respondent/promoter i.e., Emaar MGF Land Limited. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund the entire amount along with interest and the compensation.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

| Project Name and Location | Emmar MGF Land Limited "Gurgaon Greens" Sector-102, Gurugram. |
|--|---|
| <p>Possession Clause: - 7. POSSESSION AND SALE DEED <i>"(a) Within 60 (sixty) days from the date of issuance of Occupation Certificate by the concerned Authorities, the Company shall offer the possession of the Unit to the Allottee. Subject to Force Majeure and fulfilment by the Allottee of all the terms and conditions of this Agreement including but not limited to timely payment by the Allottee of the Total Price payable in accordance with Payment Plan, Annexure-III, along with stamp duty, registration and incidental charges and other charges in connection thereto due and payable by the Allottee and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, <u>the Company shall offer the possession of the Unit to the Allottee on or before 31-12-2018.</u>"</i> (Emphasis supplied)</p> | |
| <p>Occupation certificate: - ➤ OC received on 16.07.2019 for tower/block (1,2,24,25,26,27 (6 no's)) and (3 and 4 (2 no's)) and 23.</p> | |

| Sr. No | Complaint No., Case Title, and Date of filing of complaint | Reply status | Unit No. | Date of apartment buyer agreement | Due date of possession | Total Consideration / Total Amount paid by the complainant(s) | Offer of possession / Conveyance Deed Executed on |
|--------|---|------------------------------|--|---|---|--|---|
| 1. | CR/4932/2020 Mrs. Anuradha V/S Emaar MGF Land Limited Date of Filing of complaint 12.01.2021 | Reply Received on 02.07.2021 | GGN-02-0402, 4 th floor, building no. 2 (Page no. 60 of the complaint) | 19.06.2018 (Page no. 43 of the complaint) | 31.12.2018 [As per mentioned in the buyer's agreement] | TSC: - Rs.1,03,32,480/- AP: - Rs.1,03,32,475/- (As per applicant ledger dated 29.01.2021, page 127-128 of the reply) | 18.07.2019 (Page 138 of the reply) 16.09.2019 (Annexure R-14, page 149 of reply) |
| 2. | CR/437/2021 Sumitra Sehrawat and Parveen Sehrawat V/s Emaar MGF Land Limited Date of Filing of complaint 29.01.2021 | Reply Received on 18.03.2021 | GGN-09-0601, 6 th floor, building no. 9 [Page 52 of complaint] | 14.11.2018 (Annexure P2, page 39 of complaint) | 31.12.2018 [As per mentioned in the buyer's agreement] | TSC: - Rs.1,06,50,004/- AP: - Rs.1,06,50,004/- (As per applicant ledger dated 13.08.2020, page 112-113 of the complaint) | 03.06.2019 (Page 128 of the reply) 04.09.2019 (Annexure R-14, page 138 of reply) |

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation Full form

TSC Total Sale consideration

AP Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the apartment buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of refund the entire amount along with interest and compensation.
 5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
 6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case *CR/4932/2020 titled as Mrs. Anuradha V/S Emaar MGF Land Limited* are being taken into consideration for determining the rights of the allottee(s) qua refund the entire amount along with interest and compensation.
- A. Project and unit related details**
7. The particulars of the project, the details of 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:

CR/4932/2020 titled as Mrs. Anuradha V/S Emaar MGF Land Limited

| S.No. | Heads | Information |
|-------|--|---|
| 1. | Project name and location | Gurgaon Greens, Sector 102, Gurugram. |
| 2. | Project area | 13.531 acres |
| 3. | Nature of the project | Group housing colony |
| 4. | DTCP license no. and validity status | 75 of 2012 dated 31.07.2012 Valid/renewed up to 30.07.2020 |
| 5. | Name of licensee | Kamdhenu Projects Pvt. Ltd. and another C/o Emaar MGF Land Ltd. |
| 6. | HRERA registered/ not registered | Registered vide no. 36(a) of 2017 dated 05.12.2017 for 95829.92 sq. mtrs. |
| | HRERA registration valid up to | 31.12.2018 |
| 7. | HRERA extension of registration vide | 01 of 2019 dated 02.08.2019 |
| | Extension valid up to | 31.12.2019 |
| 8. | Occupation certificate granted on | 16.07.2019 [annexure R9, page 135 of reply] |
| 9. | Provisional allotment letter dated | 05.01.2017 [annexure P1, page 37 of complaint] |
| 10. | Unit no. | GGN-02-0402, 4 th floor, building no. 2 [annexure P2, page 60 of complaint] |
| 11. | Unit measuring (super area) | 1650 sq. ft. |
| 12. | Date of execution of buyer's agreement | 19.06.2018 [annexure P2, page 43 of complaint] |

| | | |
|-----|---|--|
| 13. | Payment plan | Time linked payment plan [Page 98 of complaint] |
| 14. | Total consideration as per statement of account dated 29.01.2021 at page 127 of reply | Rs.1,03,32,480/- |
| 15. | Total amount paid by the complainants as per statement of account dated 29.01.2021 at page 128 of reply | Rs.1,03,32,475/- |
| 16. | Possession clause | <p>7. POSSESSION AND SALE DEED</p> <p><i>(a) Within 60 (sixty) days from the date of issuance of Occupation Certificate by the concerned Authorities, the Company shall offer the possession of the Unit to the Allottee. Subject to Force Majeure and fulfillment by the Allottee of all the terms and conditions of this Agreement including but not limited to timely payment by the Allottee of the Total Price payable in accordance with Payment Plan, Annexure-III, along with stamp duty, registration and incidental charges and other charges in connection thereto due and payable by the Allottee and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, <u>the Company shall offer the possession of the Unit to</u></i></p> |

| | | |
|-----|--|--|
| | | <u><i>the Allottee on or before 31-12-2018</i></u> (emphasis supplied) [annexure P2, page 68 of complaint] |
| 17. | Due date of delivery of possession as per clause 7(a) of the said agreement | 31.12.2018 |
| 18. | Date of offer of possession to the complainants | 18.07.2019 [annexure R10, page 138 of reply] |
| 19. | Date of handing over of possession as per unit handover letter | 10.09.2019 [annexure R13, page 148 of reply] |
| 20. | Conveyance deed executed on | 16.09.2019 [annexure R14, page 149 of reply] |
| 21. | Delay in handing over possession w.e.f. due date of possession i.e., 31.12.2018 till date of handing over of possession i.e., 10.09.2019 | 8 months 10 days |

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
 1. That somewhere in the mid of 2017, the respondent through its business development associate approached them with an offer to invest and buy a flat in the proposed project of the respondent. On 29.11.2017, the complainants had a meeting with respondent where the respondent explained the project details and

highlighted the amenities of the project like joggers park, joggers track, rose garden, 2 swimming pool, amphitheater and many more. Relying on these details, the complainant enquired about the availability of flat on 4th floor in tower 02 which was a unit consisting area of 1650 sq. ft. It was assured to the complainant that the respondent has already processed the file for all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement material of the said project to them and assured that the allotment letter and builder buyer agreement for the said project would be issued to them within one week of booking to be made by them. The complainant, relying upon those assurances and believing them to be true, booked a residential flat bearing no. 0402 on 4th floor in tower 02 in the proposed project of the respondent measuring approximately super area of 1650 sq. ft. Accordingly, they have paid Rs.9,50,000/- as booking amount on 29.11.2017.

- II. That on 05.01.2018, the respondent issued a provisional allotment letter to the complainant. Thereafter, on 19.06.2018, buyer's agreement was executed inter parties on similar terms as narrated by the respondent in provisional allotment letter.

- III. That as per the clause 7(a) of the buyer's agreement dated 19.06.2018, the respondent had agreed and promised to complete the construction of the said flat and deliver its possession on or before 31.12.2018. The proposed possession date as per buyer's agreement was due on 31.12.2018. However, the respondent has breached the terms of said buyer's agreement and failed to fulfill its obligations and has not delivered possession of said flat within the agreed time frame of the buyer's agreement.
- IV. That from the date of booking (29.11.2017) till 18.08.2019, the respondent had raised various demands for payment of instalments towards the sale consideration of the flat from the complainant and she has paid & satisfied all those demands as per the buyer's agreement without any default or delay on their part. The complainant was and has always been ready and willing to fulfil their part of agreement.
- V. That as per annexure-III (schedule of payments) of buyer's agreement, the total sale consideration of the said flat was Rs.92,67,302/- (exclusive of service tax and GST but includes the charges towards the basic price- Rs.84,59,952/-, car parking Rs.3,00,000/-, Governmental charges EDC- Rs.5,21,400/-, IDC- Rs.49,500/-, club membership Rs.50,000/-, IFMS Rs.82,500/-, and other charges of Rs.1,03,950/-). But later at the time of possession, the respondent increased the sale consideration to Rs.92,86,428/-

without any reason for the same. The respondent increased the sale consideration by Rs.19,126/- without any reason which is illegal, arbitrary, unilateral, and unfair trade practice. The complainant opposed the increase in sales consideration at time of possession, but respondent did not pay any attention towards their claims.

- VI. That as per the statement dated 16.09.2020, issued by the respondent, the complainant has already paid Rs.1,03,32,475/- towards total sale consideration as demanded by the respondent from time to time and now nothing is pending to be paid on their part.
- VII. That the possession was offered by respondent through letter "Intimation of Possession" dated 18.07.2019 which was not a valid offer of possession because respondent had offered the possession with stringent condition to pay certain amounts which were never part of agreement, and the subject unit was handed over after delay of approx. 9 months. At the time of offer of possession, builder did not adjust the penalty for delay possession (from proposed handing over date i.e., 31.12.2018 till actual date of offer of possession i.e., 18.07.2019). In case of delay payment, builder charged the penalty @10% per annum and as per clause 7(a) of buyer's agreement, the respondent should also compensate the complainant in case the possession of flat is delayed by respondent.

However, the respondent breached the terms of the buyer's agreement and did not adjust/compensate the complainants for delayed possession in final demand letter raised by the respondent. The respondent did not allow the complainants to visit the property before clearing the final demand raised by respondent along with the offer of possession. The respondent demanded two-year advance maintenance charges from complainant and respondent also demanded extra amount of Rs.19,126/- in the name of "other charges" which was never agreed under the buyer's agreement. The respondent left no other option to complainant, but to pay the payment of two-year maintenance charges of Rs.1,44,540/- and Rs.3,38,400/- towards e-stamp duty and Rs.45,000/- towards registration charges of subject unit in addition to final demand raised by respondent along with the offer of possession. The respondent scheduled physical inspection of the subject unit and handed over the same on 10.09.2019 after receiving all payments on 18.08.2019 from the complainants.

- VIII. That after taking possession of flat on 10.09.2019, the complainant also identified some major structural changes which were done by respondent in project in comparison to features of project narrated to them on 29.11.2017 at the office of respondent. Area of central park was told to be 8 acres but in reality, it is very small as compared to 8 acres and respondent also build car parking

underneath 'central park'. Jogger's track does not exist, and the respondent also changed the layout of green areas as promised at the time of booking of flat and project layout plan. The respondent has placed the cement blocks in the place of green area and the respondent has also made unauthorized walkways and driveways in the project by cutting short the park or green areas. The respondent changed the layout of green area between the eastern side of tower 23 to southern side of tower 22. Most of the amenities does not exist in project whereas it was highlight at the time of booking of flat. Respondent did many structural changes and cut down on the internal features of project, based on which the respondent sold this flat to complainant and gain exception amount of profit on the cost of complainant and other buyers of the project in question. Respondent did not even confirm or revised the exact amount of EDC, IDC, and PLC after considering the structural changes neither they provided the receipts or documentary records showing the exact amount of EDC, IDC and PLC paid to government.

- IX. That the respondent did not provide the final measurement of above said unit. Respondent charged all IDC, EDC, and PLC and maintenance charges as per area of unit i.e., 1650 sq. ft. but there is no architect confirmation provided by respondent about the final unit area which respondent has handed over to the complainant.

X. That the respondent compelled the complainant to pay two-year advance maintenance of Rs.1,44,540/- (@Rs.3.63 per sq. ft. per month) before taking the physical possession of flat which is a unilateral demand of the respondent and even the calculation of maintenance charges are not as per the buyer's agreement. Now after taking possession of subject flat, respondent with a malafide intention started overcharging complainant in the name of common area electricity charges and fixed monthly electricity charges of Rs. 860/- per month. Respondent charged the complainants for electricity supplied by the distribution licensee (DHBN) at a tariff higher than the rates for domestic supply category, which is illegal, arbitrary, unilateral act of the respondent. Respondent is using the same electricity connection for pending project activities whereas respondent should have a separate temporary electricity connection for the same. Buyer's agreement defined the formula of calculation of maintenance charges and other common charges which also include charges concerning common area electricity charges, but respondent unilaterally charged stringent charges from complainants in the name of maintenance charges and common area electricity charges. Also, the respondent installed a prepaid electric meter system in each flat and charged a fixed minimum charge of Rs. 860/- per month without any usage by the complainant, whereas

no such fixed charges were claimed by the distribution licensee (DHBVN) electricity supplying agency. Respondent charged far more than total expenses incurred by respondent against electricity bill received from DHBVN Haryana and electricity produced through DG. Respondent also charged hire charges for electricity meter whereas respondent already took Rs.1,22,662/- under head "other charges" for electricity meter fitting which is not in line with buyer's agreement.

- XI. That on 23.09.2019, the possession has been delayed by the respondent by 9 months. The cause of action accrued in the favour of the complainant and against the respondent on 29.11.2017 when the said flat was booked by them, and it further arose when respondent failed/neglected to deliver the said flat on proposed delivery date. The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainant

9. The complainant has filed the present compliant for seeking following relief: -
- i. Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on the amount paid by the complainants as sale consideration of the said flat from the date of payment till the date of delivery of possession.

- ii. Direct the respondent to return Rs.19,126/- unreasonably charged by respondent by increasing sale price after execution of buyer's agreement.
- iii. Direct the respondent to restore the amenities like joggers track in joggers park and direct the respondent to remove the cement blocks to restore the green area at the circumference of central green. Also, direct the respondent to restore all unauthorized walkways and driveways as per the project layout shown in the buyer's agreement.
- iv. Direct the respondent to restore all changes in the layout of green area between the eastern side of tower 23 to southern side of tower 22. Also, impose adequate penalty on respondent making change in layouts of project and for deficiency of services.
- v. Impose penalties on respondent as per the provisions of law for not providing 8 acres of central green as promised by the respondent.
- vi. Direct the respondent to refund the total advance amount taken by the respondent on account of maintenance charges.
- vii. Direct the respondent to show the actual records of paying EDC and IDC to government and return excess amount collected from complainants on account of EDC and IDC.
- viii. Restrain the respondent to charge fixed monthly charges for electricity and restrain the respondent to charge common area

electricity charges till the respondent did not submit the actual consumption of electricity at common area and till respondent install a temporary electricity meter from the electricity distributor licensee (DHBVN) for their pending project activity.

- ix. Direct the respondent to get the flat measurement done by independent architect and furnish the report of actual size of flat to complainants and adjust the cost in accordance with actual size deliver to the complainants.
 - x. Direct the respondent to charge electricity charges in accordance with consumptions of units by complainants and restrain the respondent from charging fixed minimum charges on electricity meters.
10. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

D. Reply by the respondent

11. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:
 - i. That the complainant has filed the present complaint seeking interest and compensation for alleged delay in delivering possession of the apartment booked by the complainant. It is

respectfully submitted that such complaints are to be decided by the adjudicating officer under section 71 of the Act read with rule 29 of the rules and not by this hon'ble authority. The present complaint is liable to be dismissed on this ground alone.

- ii. That the present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 19.06.2018. That the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act.
- iii. That the complainant was provisionally allotted apartment no. GGN-02-0402, admeasuring super area of 1650 sq. ft. The complainants had opted for a construction linked payment plan. Thereafter, the buyer's agreement was executed between the both the parties on 19.06.2018 and subsequently, addendum to the buyer's agreement along with amended payment schedule was also executed inter se parties. The statement of account dated 29.01.2021 reflects the payments made by the complainant as well as the delayed payment interest levied on the complainant by the respondent.
- iv. That in the meanwhile, the respondent registered the project under the provisions of the Act. The project had been initially

registered till 31.12.2018 vide registration certificate dated 05.12.2017. Subsequently, the registration of the project was extended up till 31.12.2019 vide certificate dated 02.08.2019. In the meanwhile, the respondent completed construction of the tower in which the apartment in question is situated and applied for the occupation certificate in respect thereof on 11.02.2019. The occupation certificate was issued by the competent authority on 16.07.2019.

- v. That upon receipt of the occupation certificate, the respondent offered possession of the apartment in question to the complainant vide letter dated 18.07.2019. The complainant was called upon to remit balance amount as per the attached statement and also to complete the necessary formalities and documentation so as to enable the respondent to hand over possession of the apartment to the complainant. Eventually, the complainant took possession of the apartment in question on 10.09.2019. Thereafter, the conveyance deed has also been registered in favour of the complainant on 16.09.2019. At the time of taking possession of the apartment, the complainant has certified themselves to be fully satisfied with regard to the measurements, location, direction, developments et cetera of the unit and also admitted and acknowledged that the complainant do not have any claim of any nature whatsoever against the

respondent and that upon acceptance of possession, the liabilities and obligations of the respondent as enumerated in the allotment letter/buyer's agreement, stand fully satisfied. Thus, the complainant is estopped from filing the present complaint. The complaint is not maintainable after execution and registration of the conveyance deed in favour of the complainant. The institution of the present complaint is nothing but an afterthought. The respondent has duly completed construction of the apartment in question and has also offered possession of the same to the complainant within the time period stipulated under the buyer's agreement. There is no default or lapse on the part of the respondent.

- vi. That the respondent has credited a sum of Rs.2,29,688/- as benefit on account of anti-profiting. Without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the allottees/complainants towards the basic principle amount of the unit in question and not on any amount credited by the respondent, or any payment made by the allottee/complainant towards delayed payment charges or any taxes/statutory payments etc.
- vii. That the contractual relationship between the complainant and the respondent is governed by the terms and conditions of the buyer's agreement dated 19.06.2018. Clause 7 of the buyer's

agreement provides that subject to force majeure conditions and delay caused on account of reasons beyond the control of the respondent, and subject to the allottee not being in default of any of the terms and conditions of the same, the respondent expects to deliver possession of the apartment within a period of 60 days from the date of issuance of the occupation certificate by the competent authority. The occupation certificate was issued by the competent authority on 16.07.2019 and the offer of possession was made two days later, i.e., on 18.07.2019. Thus, there is no delay in so far as the respondent is concerned.

- viii. That it is not disputed that the respondent did not allow any visitors at the site while the construction work was ongoing, out of safety and security considerations. Subsequently, as has been admitted by the complainants, the site visit was arranged by the respondent prior to hand over. It is wrong and denied that the respondent is not entitled to demand maintenance charges from the complainant. On the contrary, in accordance with clause 19 of the buyer's agreement, the complainant is bound to pay maintenance charges, including advance maintenance charges for a period of one year or as may be decided by the respondent/the maintenance agency at its discretion. It is pertinent to mention herein that the complainants are liable to pay all taxes, levies, fees that are applicable upon the apartment booked by the

complainant as per clause 3 of the buyer's agreement and stamp duty and registration charges are also payable by the complainant in accordance with clause 7(a) of the buyer's agreement.

- ix. That it is denied that after taking possession of the apartment, the complainant identified any so-called major structural changes carried out by the respondent in the project. It is submitted that the respondent has constructed and developed the project strictly in accordance with the layout plans duly approved by the competent authority. It is wrong and denied that the area of the central park was stated to be 8 acres. Insofar as the plans of the project are concerned, it is clearly provided in clause 5 of the buyer's agreement that the plans of the project are tentative and subject to change at the discretion of the respondent or as directed by any competent authority. Clause 6 of the buyer's agreement further provides that the complainants shall not raise any objection for any additions, alterations or modifications in the project carried out by the respondent, including changing building plans, floor plans, location, preferential location, unit number, increase or decrease in the number of apartments/floors /blocks of the super area of the unit, designs, specifications et cetera. It is only when the change/modification results in increase/decrease of the super area by 10% or more that the consent of the complainants is required to be taken.

- x. That it is denied that the respondent has charged surplus/extra amount towards EDC and IDC from the complainants or any other buyers in the project. It is denied that any adjustment is required to be made by the respondent. Insofar as PLC is concerned, the same is not a government levy but a premium payable upon apartments which are preferentially located. It is reiterated that the respondent has duly constructed the project in accordance with the plans duly sanctioned on approved by the competent authority. It is submitted that had there been any irregularity on the part of the respondent, the competent authority would not have issued the occupation certificate in favour of the respondent.
- xi. That it is denied that the respondent has not provided the final measurement of the apartment in question. The super area, as calculated in accordance with the buyer's agreement comprises of the area of the unit along with the pro rata share in the common areas and facilities of the project. The confirmation by the architect shall be provided by the respondent at the time of filing of the deed of declaration before the competent authority under the Haryana Apartment Ownership Act, 1983. The respondent is not required to provide any independent confirmation to the complainant.
- xii. That the electricity charges are being charged as per DHBVN and HERC guidelines for bulk supply domestic tariff rates by the

respondent from the allottees. The complainant has falsely alleged that the respondent is overcharging the electricity charges from the allottees. Furthermore, as far as usage of the same electricity connection for pending project activities is concerned, it is submitted that the electricity being used on project related work is being metered and charged to the respondent. The electricity is charged from the allottees as per DHBVN/HERC guidelines in the following manner:

- a. Energy Charges- Rs. 6.20/- per unit;
 - b. Fuel Surcharge Adjustment- Rs. 0.37/- per unit (amended from time to time);
 - c. Electricity Duty @ 1.5%- Rs. 0.10/-;
 - d. Municipal Tax @ 2.3% - Rs. 0.14/-
- xiii. Therefore, the total cost of electricity per unit is quantified at Rs.6.81/-. It is pertinent to mention that common area electricity charges do not include maintenance charges. Both the charges are demanded separately.
- xiv. That it is denied that the respondent had fixed minimum charges of Rs. 860/- per month to be paid by the complainant without any electricity usage on their part. The quantum of amount charged by the respondent towards installation of electricity meter is also matter of record. Furthermore, as per DHBVN sales circular, the minimum charges or fixed charges were being billed on the

contract demand of individual customer at a rate of Rs.100/KW. However, since DHBVN is charging the respondent on its recorded demand, this collection was stopped with effect from 31.12.2020. Furthermore, the amount so collected was reimbursed in the form of electricity units to the tune of 117.4 units. It is submitted that all the charges demanded by the respondent are strictly in accordance with the buyer's agreement and maintenance agreement.

- xv. That the respondent had completed construction of the apartment/tower by February 2019 and had applied for issuance of the occupation certificate on 11.02.2019. The occupation certificate was issued by the competent authority on 16.07.2019. It is respectfully submitted that after submission of the application for issuance of the occupation certificate, the respondent cannot be held liable in any manner for the time taken by the competent authority to process the application and issue the occupation certificate. Thus, the said period taken by the competent authority in issuing the occupation certificate as well as time taken by government/statutory authorities in according to approvals, permissions etc., necessarily have to be excluded while computing the time period for delivery of possession. The respondent has duly completed construction of the apartment in question and has also offered possession of the same within the

period of extended registration under the Act, well within the agreed timelines as provided under the buyer's agreement. There is no default or lapse on the part of the respondent. The interest for the alleged delay demanded by the complainants is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation beyond or contrary to the agreed terms and conditions between the parties. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

E. Written arguments by the respondent

12. The respondent has filed written arguments on 01.10.2021. The respondent submitted that the changes performed in the construction of the project has been necessitated on account of the changes in the building plans. Furthermore, the complainant had understood and agreed that they would not be entitled to challenge or stake any claim on account of the changes carried out in the building plans.
13. That with respect to the respondent for not providing 8 acres of central green, it is submitted that a clause in the Model Zoning Clauses for Group Housing Project contains-
 - 5(xi) of the Haryana Building Code, 2017 reads as under: "While all the open spaces including those between the blocks and wings of buildings shall be developed, equipped and landscaped according to the plan approved by the competent authority. At least 15% of the

total site area shall be developed as organised open space i.e., tot-lots and playground.”

- Thus, the developer is obliged to provide 15% of the total project area as open space. In the present case, the open space provided for the project is much in excess of the statutory requirement. The total area is 13.53 acres (54757.927 sq. mtrs.). As per approved drawings, the site area for calculation of FAR is 12.75 acres (51605.431 sq. mtrs.). The ground coverage achieved for the project is 4.36 acres (17635.347 sq. mtrs.). The open areas in the project arrived after deduction of ground coverage is 8.39 acres (33970.084 sq. mtrs.). The reference was placed by the complainants on welcome letter. That the indication in the welcome letter is marginally. No misrepresentation of any nature has been made. Actually, the intent was to convey that open space measuring a shade above 8 acres would be provided in the project. It is absolutely irrational on the part of the complainants to contend that 'Central Greens' implied a total green cover. If the relevant sentence in the welcome letter is taken into reckoning, it reveals that the central greens referred to therein also provides for a jogging track, health clubs, tennis courts, swimming pool with splash pool etc. Thus, the intent was to establish that there would be plenty of open space. The complainant had also placed reliance on the brochure of the project. Scrutiny of the brochure makes it evident that the words 'Open Area' had been specifically mentioned therein. It is

submitted that the provision for open space as statutorily required for residential group housing project has been strictly adhered to by the respondent and no lapse can be attributed to the respondent.

F. Rejoinder by the complainant

14. The complainant has file rejoinder before the authority on 10.12.2021. It is submitted that the complainant purchased the subject flat only because respondent promised a big size 8 acres central green and several other big green areas such as joggers park and other greens promised by the respondent. The respondent very well knew that the actual size of "**Central Greens**", by the time the complainant booked the subject unit with them. The respondent marked every green area with a specific nomenclature such as Joggers Park (area in front of tower 23 to tower 27) for which the respondent was charging a PLC of Rs.3,30,000/-, Central green (recreational green are developed over centrally located podium) for which respondent was charging a PLC of rs.4,95,000/- and greens (area located in back side of tower 17 & 18) for which the respondent was charging PLC of Rs.2,47,500/-. Before, the Act came into force, the respondent had common practice of charging Rs.4,95,000/- on account of PLC charges for 8 acres of "Central Green" from all the allottee. But after coming into force of the Act, the respondent has clubbed these charges in the basic sale consideration, annexure III of buyer's agreement specifically mentioned that all PLCs

are included in the unit price. Now it's evident from the documents submitted by the respondent that the total area covered by Central Greens (Podium) is 7371.63 sq. mtrs. which is 1.82 acres in comparison of promised area of 8 acres. There is a clear shortfall of 6.18 acres of space in Central Greens area. The proportionate claim for 6.18 acres of shortfall is Rs.3,82,387/- (PLC for 8 acres Central Greens = Rs.4,95,000/-). Therefore, the complainant had approached the authority to get the lawful claims and request the authority to invoke its penal provisions against the respondent for sustaining irrevocable loss to complainant by the reason of incorrect and false statement furnished by respondent under brochure and welcome letter.

15. 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.

G. Jurisdiction of the authority

16. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

G.1 Territorial jurisdiction

17. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

G.II Subject-matter jurisdiction

18. Section 11(4)(a) of the Act provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

(4) The promoter shall-

- (a) *be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

19. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided

by the adjudicating officer if pursued by the complainants at a later stage.

H. Findings on the objections raised by the respondent

H.1 Objection regarding exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate.

20. As far as contention of the respondent with respect to the exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate is concerned, the authority observed that the respondent had applied for grant of occupation certificate on 11.02.2019 and thereafter vide memo no. ZP-835-AD(RA)/2018/16816 dated 16.07.2019, the occupation certificate has been granted by the competent authority under the prevailing law. The authority cannot be a silent spectator to the deficiency in the application submitted by the promoter for issuance of occupancy certificate. It is evident from the occupation certificate dated 16.07.2019 that an incomplete application for grant of OC was applied on 11.02.2019 as fire NOC from the competent authority was granted only on 30.05.2019 which is subsequent to the filing of application for occupation certificate. Also, the Chief Engineer-I, HSVP, Panchkula has submitted his requisite report in respect of the said project on 19.06.2019. The District Town Planner, Gurugram and Senior Town Planner, Gurugram has submitted requisite report about this project on 03.06.2019 and 10.06.2019 respectively. As such, the application

submitted on 11.02.2019 was incomplete and an incomplete application is no application in the eyes of law.

21. The application for issuance of occupancy certificate shall be moved in the prescribed forms and accompanied by the documents mentioned in sub-code 4.10.1 of the Haryana Building Code, 2017. As per sub-code 4.10.4 of the said Code, after receipt of application for grant of occupation certificate, the competent authority shall communicate in writing within 60 days, its decision for grant/ refusal of such permission for occupation of the building in Form BR-VII. In the present case, the respondent has completed its application for occupation certificate only on 19.06.2019 and consequently the concerned authority has granted occupation certificate on 16.07.2019. Therefore, in view of the deficiency in the said application dated 11.02.2019 and aforesaid reasons, no delay in granting occupation certificate can be attributed to the concerned statutory authority.

H. II Whether signing of unit hand over letter or indemnity-cum-undertaking at the time of possession extinguishes the right of the allottee to claim delay possession charges.

22. The respondent contended that at the time of taking possession of the subject unit vide unit hand over letter dated 10.09.2019, the complainants have certified themselves to be fully satisfied with regard to the measurements, location, direction, developments et cetera of the unit and also admitted and acknowledge that they do not have any claim of any nature whatsoever against the respondent and that upon

acceptance of possession, the liabilities and obligations of the respondent as enumerated in the allotment letter/buyer's agreement, stand fully satisfied. The relevant para of the unit handover letter relied upon reads as under:

"The Allottee, hereby, certifies that he / she has taken over the peaceful and vacant physical possession of the aforesaid Unit after fully satisfying himself / herself with regard to its measurements, location, dimension and development etc. and hereafter the Allottee has no claim of any nature whatsoever against the Company with regard to the size, dimension, area, location and legal status of the aforesaid Home.

Upon acceptance of possession, the liabilities and obligations of the Company as enumerated in the allotment letter/Agreement executed in favour of the Allottee stand satisfied."

23. In the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.**, the authority has comprehensively dealt with this issue and has held that the aforesaid unit handover letter does not preclude the complainants from exercising their right to claim delay possession charges as per the provisions of the Act.
24. In light of the aforesaid order, the complainants are entitled to delay possession charges as per provisions of the Act despite signing of indemnity at the time of possession or unit handover letter.

H.III Whether the execution of the conveyance deed extinguishes the right of the allottee to claim delay possession charges?

25. The respondent submitted that the complainants have executed the conveyance deed on 16.09.2019 and therefore, the transaction between the complainants and the respondent have been concluded and no right or liability can be asserted by respondent or the complainants against

the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case. The present complaint is nothing but a gross misuse of process of law.

26. In the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.**, the authority has comprehensively dealt with this issue and has held that taking over the possession and thereafter execution of the conveyance deed can best be termed as respondent having discharged its liabilities as per the buyer's agreement and upon taking possession, and/or executing conveyance deed, the complainants never gave up their statutory right to seek delayed possession charges as per the provisions of the said Act. Also, the same view has been upheld by the Hon'ble Supreme Court in case titled as **Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now Known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019)** dated 24.08.2020, the relevant paras are reproduced herein below:

"34 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into a pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their right to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their title to the flats for which they had

paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who seeks to espouse a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position which the NCDRC has espoused. We cannot countenance that view.

35. *The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeking a Deed of Conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."*

27. Therefore, in furtherance of **Varun Gupta V/s Emaar MGF Land Ltd. (supra)** and the law laid down by the hon'ble Apex Court in the **Wg. Cdr. Arifur Rahman (supra)**, this authority holds that even after execution of the conveyance deed, the complainants cannot be precluded from their right to seek delay possession charges from the respondent-promoter.

I. Findings on the reliefs sought by the complainants.

- 1.1 **Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on the amount paid by the complainants as sale consideration of the said flat from the date of payment till the date of delivery of possession.**

28. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....
Provided 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 the handing over of the possession, at such rate as may be prescribed."

29. Clause 7(a) of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

"7. POSSESSION AND SALE DEED

- (a)** *Within 60 (sixty) days from the date of issuance of Occupation Certificate by the concerned Authorities, the Company shall offer the possession of the Unit to the Allottee. Subject to Force Majeure and fulfillment by the Allottee of all the terms and conditions of this Agreement including but not limited to timely payment by the Allottee of the Total Price payable in accordance with Payment Plan, Annexure-III, along with stamp duty, registration and incidental charges and other charges in connection thereto due and payable by the Allottee and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company shall offer the possession of the Unit to the Allottee on or before 31-12-2018."*

(Emphasis supplied)

30. **Due date of possession and admissibility of grace period:** As per clause 7(a) of the buyer's agreement, the respondent was under obligation to offer the possession of the unit to the allottee on or before 31.12.2018.

31. The counsel for the respondent submitted that the project in question is registered vide no. 36(a) of 2017 and the same was initially valid till 31.12.2018 and thereafter, the respondent has sought extension of registration and the same was extended till 31.12.2019. The occupation certificate was granted by the competent authority on 16.07.2019 and the possession was offered on 16.07.2019, therefore, there is no delay in offering possession in so far as respondent is concerned.
32. The authority is of the view that the promoter is obliged under the proviso to section 3 of the Act to get the on-going project registered, for a certain time period, where the completion certificate has not been issued. At the time of filing application for registration, promoter must disclose the end date [under section 4(2)(l)(C)] within which he shall be able to complete the development of the project. It is worthwhile to note that, as mentioned in the application, the development of the real estate project should be completed in all means within the stipulated end date but if the promoter fails to complete the development of the project within the end date, then as per section 6 of the Act, the promoter can apply for extension of the end date for a further period of 1 (one) year. Furthermore, the extension of registration certificate is without prejudice to the rights of allottees as per proviso to section 18(1) of the Act regarding delay possession charges from the due date of possession till the actual handing over of possession.

33. In the light of the above clause of the buyer's agreement, the promoter was under obligation to handover possession of the subject unit by 31.12.2018 as mentioned in the registration certificate and buyer's agreement. The respondent was unable to handover the possession within the time period stipulated in the registration certificate and buyer's agreement. Since the construction of the said project was not complete within the time frame as mentioned in the registration certificate consequently, the respondent applied for extension of registration. The extension of the registration shall in no means hinder the rights of the allottees provided under section 18 of the Act. Therefore, it can be concluded that the due date of handing over possession is 31.12.2018 as mentioned in the registration certificate and clause 7(a) of the buyer's agreement. In other words, the respondent was liable to handover possession by 31.12.2018 and the respondent has failed to handover possession by the said due date.
34. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate of 18% p.a. Proviso to 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 the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%;

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

35. The legislature in its wisdom in the subordinate legislation under rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
36. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 17.08.2022 is 8%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10%.
37. **Rate of interest to be paid by the complainant in case of delay in making payments-** The respondent contended that the complainant has defaulted in making timely payments of the instalments as per the payment plan, therefore, they are liable to pay interest on the outstanding payments.
38. The authority observes that the definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be

equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(zo) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

39. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
40. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 7(a) of the buyer's agreement executed between the parties on 19.06.2018, the possession of the subject flat was to be delivered on or before 31.12.2018. Occupation certificate was granted by the concerned authority on 16.07.2019 and thereafter, the possession of the subject flat was offered to the complainant on 18.07.2019. Copies of the same have been placed

on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 19.06.2018 to hand over the possession within the stipulated period.

41. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 16.07.2019. The respondent offered the possession of the unit in question to the complainants only on 18.07.2019, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. The complainants took possession of the subject unit vide unit handover letter dated 10.09.2019 i.e., within 2 months from the date of offer of possession. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 31.12.2018 till the date of handing over of possession i.e., 10.09.2019.
42. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at prescribed rate of interest i.e., 10% p.a. w.e.f. 31.12.2018 till 10.09.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

I.II Direct the respondent to return Rs.19,126/- unreasonably charged by the respondent by increasing sale price after execution of buyer's agreement between the respondent and the complainants.

43. With respect to the said relief sought by the complainant, the complainant submitted that as per annexure-III (schedule of payments) of buyer's agreement, the total sale consideration of the said flat was Rs.92,67,302/- (exclusive of service tax and GST but includes the charges towards the basic price- Rs.84,59,952/-, car parking Rs.3,00,000/-, Governmental charges EDC- Rs.5,21,400, IDC- Rs.49,500/-, club membership Rs.50,000/-, IFMS Rs.82,500/-, and other charges of Rs.1,03,950/-). But later at the time of possession, the respondent increased the sale consideration to Rs.92,86,428/- without any reason for the same. The respondent increased the sale consideration by Rs.19,126/- without any reason which is illegal, arbitrary, unilateral and unfair trade practice. On the other hand, the respondent has denied that any amount has been added or the sale consideration has been increased by the respondent in the manner claimed by the complainant.
44. The authority observes that as per schedule of payment annexed with the buyer's agreement (annexure P2, page 98 of complaint), the total sale consideration is Rs.92,67,302/- which is inclusive of basic sale price, EDC and IDC, club membership, IFMS, car parking and PLC. Whereas as per statement of account dated 16.09.2020 (annexure P4,

page 125 of complaint), the sale consideration has been increased to Rs.92,86,428/- (sale price Rs.92,03,928/- + Rs.82,500/-) i.e. an increase of Rs.19,126/-. Accordingly, Rs.19,126/- have been charged extra and without any justification. Accordingly, Rs.19,126/- have been charged extra. Therefore, the respondent is directed to delete the said amount from the total sale consideration.

L.III Restoration of joggers park and changes in layout green areas and Central greens of 8 acres

- a. Direct the respondent to restore the amenities like joggers track in joggers park and direct the respondent to remove the cement blocks to restore the green area at the circumference of central green. Also, direct the respondent to restore all unauthorized walkways and driveways as per the project layout shown in the buyer's agreement.
 - b. Direct the respondent to restore all changes in the layout of green area between the eastern side of tower 23 to southern side of tower 22. Also, impose adequate penalty on respondent making change in layouts of project and for deficiency of services.
 - c. Impose penalties on respondent as per the provisions of law for not providing 8 acres of central green as promised by the respondent.
45. The counsel for the complainant submitted that the joggers track does not exist in the jogger's park and the respondent has placed cement blocks in the place of green area and the respondent has made unauthorized walkways and driveways in the project by cut short the park or green areas. The counsel for the complainant submitted that on 29.11.2017, it was narrated to them that the central park was told to be 8 acres but in reality, it is very small as compared to 8 acres. The respondent has also built car parking underneath central park.

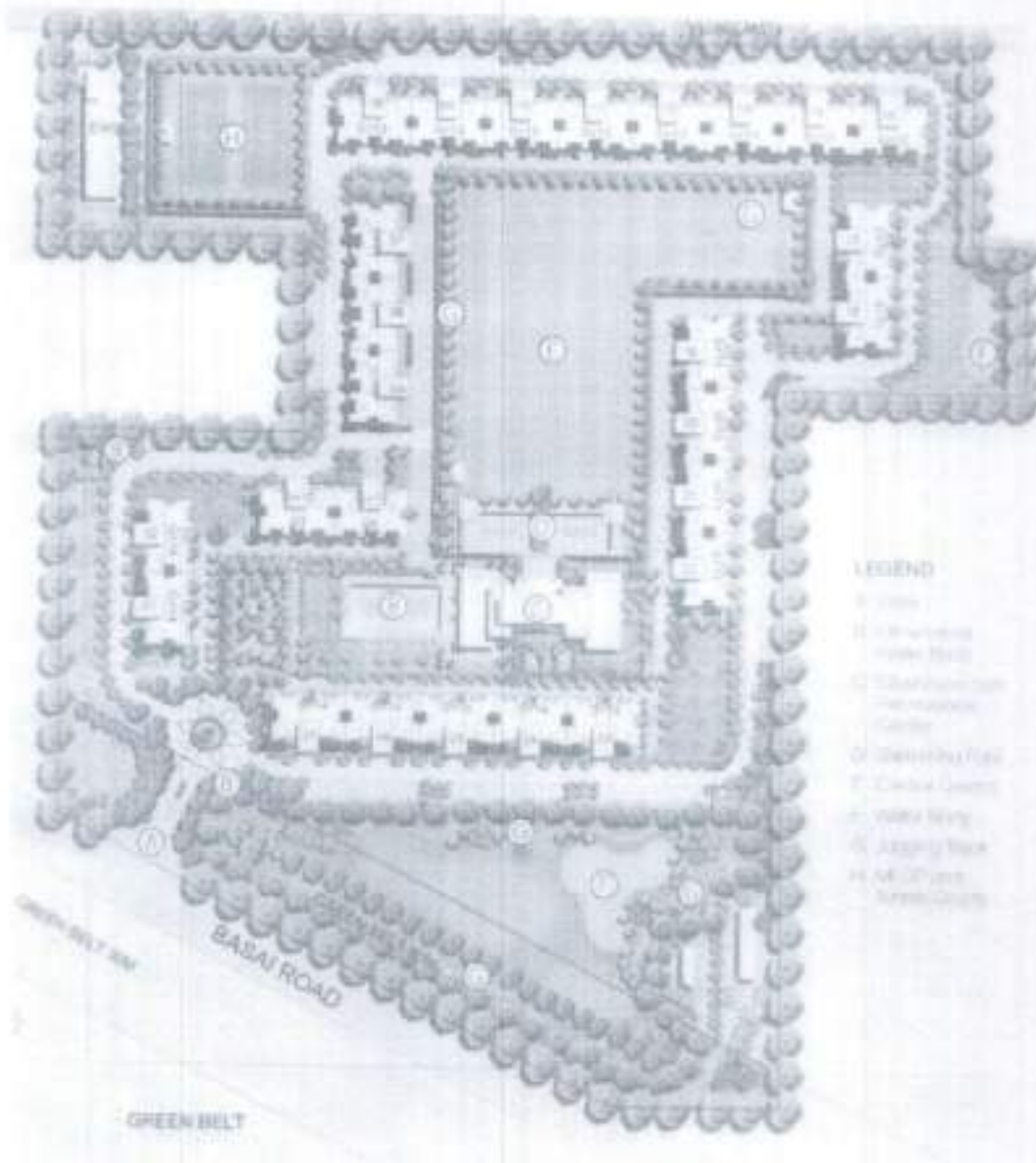
46. On the contrary, the counsel for the respondent submitted that the features and facilities in the project in accordance with the buyer's agreement. The project has been constructed in accordance the buyer's agreement. The project has been constructed in accordance with the duly approved layout plans and no unauthorized construction has been carried out by the respondent. Green area in the project is more than the minimum requirement under law. There is no deficiency in service in so far as the respondent is concerned. The counsel for the respondent denied that the respondent promised to provide 8 acres of central green and further submitted that the project has been constructed in accordance with the duly approved plans and applicable norms and the respondent has in fact provided green area which is in excess of the minimum green area required to be provided in the project. The counsel for the respondent submitted that the total area of the project is 13.53 acres. As per the approved drawings, the site area for calculation of FAR is 12.75 acres and the ground coverage achieved for the project is 4.36 acres. Therefore, the open areas in the project arrived after deduction of ground coverage is 8.39 acres. Furthermore, the indication in welcome letter is marginally inaccurate. The relevant portion of welcome letter is reproduced below:

"A Small Brief of the Project:

Gurgaon Greens has been envisioned as a modern community with premium homes built around central greens. Gurgaon Greens has features such as central greens spread over almost 8 acres, a jogging

track, Health Clubs, Tennis Courts, Swimming pool with splash pool, dedicated play areas for children, efficient power back up and perimeter security."

47. The counsel for the respondent further submitted that no misrepresentation of any nature has been made. Actually, the intent was to convey that open space measuring a shade above 8 acres would be provided in the project. It is absolutely irrational on the part of the complainants to contend that 'Central Greens' implied a total green cover. If the relevant sentence in the welcome letter is taken into reckoning, it reveals that the central greens referred to therein also provides for a jogging track, health clubs, tennis courts, swimming pool with splash pool etc. Thus, the intent was to establish that there would be plenty of open space.
48. The authority observes that the respondent in its brochure under proposed master plan has demarcated "E" as central greens and has narrated one of the features of the project as "*Central Greens spread over almost 8 acres*". The relevant portion of the brochure is reproduced below:



Features that make a difference

- Located on Basai Road, the existing State Highway
- Central Greens spread over almost 8 Acres.
- Premium 3 Bedroom Homes with 5. Room.
- All Towers facing Greens.
- 2 Apartments on each Floor, with 2 Elevators.
- Jogging Track, Health Club and Tennis Courts.
- Swimming Pool with Splash Pool.
- Dedicated Play-areas for Children.
- Efficient power back-up.
- Perimeter Security.



49. Furthermore, in the welcome letter, it is stated that one of the features of the said project was "*Central Greens spread over almost 8 acres*". The welcome letter/brochure, in the opinion of this authority, is a primary document and also document of gravity on the basis of which allottees book the unit, therefore, the promoter shouldn't have used such description in the welcome letter/brochure also. Proviso to section 12 of the Act provides that the if the affected by incorrect, false statement contained in the notice, advertisement or prospectus, intends to withdraw from the proposed project, he shall be returned his entire

investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act. Based on the representations made by the respondent in the brochure and welcome letter, the counsel for the complainants were specifically asked whether they intend to withdraw from the project and wish to avail remedy of refund of the entire amount paid by them along with interest at the prescribed rate in terms of section 12 of the Act. The counsel for the complainants answered in negative.

50. Further, the authority observes that as per schedule of payment annexed with the buyer's agreement, it is mentioned that the unit is preferentially location and the amount on account of 'Central Green' PLC was Rs.4,95,000/-. However, it is evident from the schedule of payment, that the respondent has given 100% discount w.r.t PLC charges. The matter of fact remains that the respondent has not charged any amount towards PLC in respect of the subject unit from the complainants. Therefore, no relief can be granted by the authority in facts and circumstance of the present case.
51. At the same time, the complainants are at liberty to approach the Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules for the claiming compensation under sections 12, 14, 18 and section 19 of the Act.

- I.V Direct the respondent to refund the total advance amount taken by the respondent on account of maintenance charges.
With respect to the relief sought by the complainants regarding advance maintenance charges, the relevant clause of the buyer's agreement is as follows:

"19. MAINTENANCE

- (a) *The Allottee hereby agrees and undertakes to enter into a separate Maintenance Agreement as per the draft provided as Annexure-VIII to this Agreement with the Maintenance Agency.*
- (b) *The Allottee further agrees and undertakes to pay the Maintenance Charges as may be levied by the Maintenance Agency for the upkeep and maintenance of the Group Housing Colony/Project/Building, its Common Areas, utilities, equipment installed in the Building and such other facilities forming part of the Group Housing Colony/Project, after taking possession/deemed possession of the Unit. Further, the Allottee agrees and undertakes to pay in advance, along with the last installment specified under Payment Plan, advance maintenance charge (AMC) equivalent to Maintenance Charges for a period of one year or as maybe decided by the Company / Maintenance Agency at its discretion. Such charges payable by the Allottee will be subject to escalation of such costs and expenses as may be levied by the Maintenance Agency."*

(Emphasis supplied)

52. The grievance of the complainants is that the respondent compelled them to pay 2 years advance maintenance charges i.e. a sum of Rs.1,44,540/- (@ Rs.3.65 per sq. ft. per month) before taking physical possession of the unit which is a unilateral demand of the respondent and even the calculation of maintenance charges are not as per the buyer's agreement. On the other hand, the respondent submitted that the respondent has collected all the amounts strictly in accordance with the terms and conditions of the buyer's agreement.
53. The authority has comprehensively dealt with this issue in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that the respondent is

right in demanding advance maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

54. The authority is of the view that the respondent is entitled to collect advance maintenance charges as per the buyer's agreement executed between the parties. However, the period for which advance maintenance charges (AMC) is levied should not be arbitrary and unjustified. It is interesting to note that as per above quoted clause 19 of the buyer's agreement, the respondent has agreed to charge AMC for a period of one year, however, at the time of offer of possession vide letter dated 18.07.2019, the respondent has demanded Rs.1,44,540/- towards advance maintenance charges (@ Rs.3.65 per sq. ft.) for period of 24 months.
55. Keeping in view the aforesaid facts, the authority is of the view that the respondent is right in demanding advance maintenance charges at the rate prescribed therein at the time of offer of possession in view of the judgement (supra). However, the respondent shall not demand the advance maintenance charges for more than one year from the complainants.

- I.VI** Records of EDC & IDC, flat measurement and electricity charges
- i.** Direct the respondent to show the actual records of paying EDC and IDC to government and return excess amount collected from complainants on account of EDC and IDC.
 - ii.** Restrain the respondent to charge fixed monthly charges for electricity and restrain the respondent to charge common area electricity charges till the respondent did not submit the actual consumption of electricity at common area and till respondent install a temporary electricity meter from the electricity distributor licensee (DHBVN) for their pending project activity.
 - iii.** Direct the respondent to get the flat measurement done by independent architect and furnish the report of actual size of flat to complainants and adjust the cost in accordance with actual size deliver to the complainants.
 - iv.** Direct the respondent to charge electricity charges in accordance with consumptions of units by complainants and restrain the respondent from charging fixed minimum charges on electricity meters.

56. With respect to the aforesaid reliefs sought by the complainants, the counsel for the complainants has not pressed them at the time of arguments. Therefore, the authority has not deliberated on the aforesaid reliefs.

J. Directions of the authority

57. Hence the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i.** The respondent is directed to pay the interest at the prescribed rate i.e., 10% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 31.12.2018 till the date of handing over of possession i.e., 10.09.2019. The arrears of

interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.

- ii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.
- iii. The respondent shall delete an amount of Rs.19,126/- from the total sale consideration.
- iv. The respondent shall collect the advance maintenance charges for 1 year only which is as per the buyer's agreement executed between the parties and shall not extend this time period arbitrarily. Therefore, the extra amount so collected shall be refunded back to the complainants.
- v. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

58. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

59. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter. There shall be separate decrees in individual cases.
60. File be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.08.2022


(Dr. K.K. Khandelwal)
Chairman


HARERA
GURUGRAM