

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

Complaint no.: 5645 of 2022
Date of decision: 03.04.2024

Surender Kumar
R/o: - H-31, Kunwar Singh Nagar, Nangloi,
New Delhi.

Complainant

Versus

M/s GCC Infra.
Office address:- P-903-905, Sector-48,
GMD Megapolis, Gurugram-122018

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Surender Kumar(Complainant in person)
Ms. Sonali Joon (Advocate)

Complainant
Respondent

ORDER

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

A. Project and unit related details

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

Sr. No.	Particulars	Details
1.	Name of the project	Global Heights Sector-88A
2.	Area of project	6.50 acres
3.	Nature of the project	Affordable Housing
4.	DTCP License no.	77 Of 2021 dated 24.09.2021 valid upto 23.09.2026
5.	RERA registered	Registration no. 7 of 2022 dated 01.02.2022 valid upto 23.09.2026
6.	Unit no.	T6-807, T-6, 8 th floor
7.	Unit area	645.065 sq. ft. and balcony area 100 sq. ft. Alongwith 2 wheeler parking space
7.	Allotment letter	07.05.2022 [As on page no. 9 of the complaint]
8.	Date of execution of buyer's agreement	25.05.2022 (As on page no.35 of complaint)
9.	Possession clause	Clause 7.1 <i>The Promoter assures to hand over possession of the said Apartment along with ready and complete common areas with all specifications, amenities and</i>

		<p><i>facilities of the project in place within a period of 4 years from the date of approval of building plans or grant of environment Clearance (hereafter referred to as the "Commencement Date"), whichever is later unless there is delay or failure due to war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature etc.</i></p> <p><i>[Emphasis supplied]</i></p> <p><i>(As on page no. 14 of complaint)</i></p>
10.	Due date of possession	07.05.2025 [Calculated 3 years from date of allotment]
11.	Total sales consideration	Rs. 28,37,369/- (As on page no. 40 of the complaint)
12.	Amount paid by the complainants	Rs. 28,37,369/- (As stated by the complainants)
13.	Occupation certificate	N/A
14.	Offer of possession	N/A

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
- I. The complainant applied for allotment of the unit under PMAY in Affordable Housing scheme of Haryana Government in the project "Global Heights 88A" situated at Village-Harsaru, Sector-88A, Gurugraon. E-draw was held on 08.04.2022 but the complainant was unsuccessful and was placed in waiting list no. 23 in 3 BHK Type-B category of flats in the project.

- II. On 07.05.2022, approximate one month later of the e-draw, the respondent allotted a unit to the complainant against cancellation of the said unit by the original allottee. The complainant was allotted flat no. T6-807 in Tower -6 to the complainant having carpet area of 645.065 Sq. Ft. and balcony area 100.030 Sq. Ft. in the project.
- III. On receiving the allotment letter on 07.05.2022, the complainant approached the respondent via e-mail to provide the four wheeler parking space as advertised in the brochure of the project. The respondent insisted the complainant to visit respondent's office to discuss about the allotment of four wheeler parking. The complainant/representative of complainant visited respondent's office on 11.05.2022 to discuss about the allotment of four wheeler parking space. During the discussion the dealing official Mr. Sishir, authorised representative of respondent unlawfully demanded an amount of Rs.4,50,000/- stating that number of four wheeler parking units are limited but the number of applicants are very high and chances of getting four wheeler parking space is very low. Furthermore, it was also told by the respondent that the transaction will be in cash only and no receipt for the aforesaid amount will be issued by the respondent. The complainant showed the inability to pay the unlawful amount of Rs.4,50,000/- and emphasized to charge @5% of the total cost of the unit i.e. Rs.1,41,869/-.
- IV. Consequently, the respondent refused to register the option of complainant for allotment of four wheeler parking space pretending that four wheeler parking spaces is allotted on first come first serve basis and all the units of four wheeler parking have been sold.

- V. Later, the complainant got home loan from SBI. As the bank insisted to submit BBA for home loan approval, hence in constraints, complainant decided to move forward for the same under assurance from the respondent for revision in the cost of four wheeler parking space. Unfortunately, the respondent then became adamant and started pretending that all the four wheeler parking space was allotted on the first come first serve basis and no vacant space is available.
- VI. The system for allotment of four wheeler parking is not transparent. Neither the number of four wheeler parking units available for allotment is publically announced nor the list of successful allottees was ever published. The complainant requested the respondent through email to disclose the details but the respondent denied to disclose details citing the reason that it is the matter of promoter/builder's discretion and highly confidential business information that cannot be revealed to anyone.
- VII. The complainant is being deprived of the right to participate in the process of allotment of four wheeler parking space by the respondent. The allotment cost of flat is equal to all the applicants (original or waiting list) but the system adopted by the respondent for allotment of four wheeler parking is discriminatory setting aside the Right to Equality of Individual incorporated in Constitution of India. All the applicants should get equal chance to participate in the process of allotment without creating any difference/category among the applicants. The present system of allotment of four wheeler parking by the respondent is against the natural justice leading to corruption.

VIII. Hence, this complaint and direct the respondent to allot four wheeler parking space charging @ 5% additional cost of aforesaid flat no. T6-806 i.e. Rs.1,41,869/-.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s)

- i. Direct the respondent to allot a four wheeler parking space charging @ 5% additional payment of the total cost of the flat.
- ii. Direct the respondent to disclose total number of four wheeler parking units available for allotment.
- iii. Direct the respondent to disclose the details of applicants with date & time of exercising option for allotment of four wheeler parking.
- iv. Direct the respondent to provide full details with contact number of successful applicants those who have been allotted four wheeler parking space.
- v. Direct the respondent to adopt transparent system of allotment of four wheeler parking.

D. Reply filed by the respondent

5. The respondent had contested the complaint on the following grounds:

- I. That it is pertinent to mention that there is no provision in the said act with regard to the four wheeler parking space, the complainants by way of the present complaint is seeking relief, which is beyond the scope and provisions of the RERA Act, 2016 and Rules.
- II. Furthermore the complainant failed to prove the contraventions and violation of the Act. The complainant has gone out of the scope of the Act and Affordable Housing Scheme, 2013 seeking relief to provide four



- wheeler parking space. Hence, the present complaint is liable to be dismissed on this sole ground.
- III. It is submitted that the allotment made to the complainant was done as per the due procedure and the complainant herein as such stepped into the shoes of the original allottee. However, it is submitted that the original allottee never made a request for the allotment of car parking space which was to be allotted on first come first serve basis as per the Affordable Housing Policy which binds the actions of the respondent herein in this regard.
- IV. It is submitted that the brochure of the respondent herein did contain information that four wheeler parking was available in the advertised project. However, nowhere in the said brochure did the respondent claim that four wheeler parking was available with each unit.
- V. The premises allotted to the complainants have already been provided with a two wheeler parking space after following the due process of law and that was never disputed by the complainant at early stage.
- VI. It is submitted that considering the fact that the number of car parking are limited, it is obvious that the request for allotment of the same cannot be considered for all applicants.
- VII. It is submitted that when the complainant was informed that the parking units were not available on account of prior applications, he did not apply for the same on his own accord. It is further submitted that till date the complainant has not submitted any application for allotment of four wheeler parking space in the project.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be

decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, 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.

E. II Subject matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 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;

10. 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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant

F.I. Direct the respondent to allot 4 wheeler parking space to the complainant.

F.II Direct the respondent to disclose the total number of 4 wheeler parking units available.

F.III Direct the respondent to disclose the details of applicants with date & time of exercising option for allotment of 4 wheeler parking.

F.IV Direct the respondent to adopt transparent system of allotment for 4 wheeler parking.

11. In the present complaint, the complainant is seeking relief to provide a four wheeler parking space. As per the record, the complainants are subsequent allottees and the allotment to them was made on 07.05.2022. According to the allotment letter, Flat no. T6-807 in Tower-T6 having carpet area of 645.065 sq.ft and balcony area 100.030 sq.ft on Floor 8 together with the two wheeler parking was allotted to the complainants.

Relevant para of the allotment letter has been reproduced below:-

*"We are glad to inform that you have been allotted **Flat No. T6-807 in Tower-T6** having carpet area of 645.065 Sq.Ft & balcony area 100.030 Sq.Ft on Floor 8 together with the two wheeler parking in our esteemed Group Housing project "Global Heights 88A", Sector-88A Gurugram in terms of Affordable Housing Policy of Haryana Government. "*

.....[Emphasis supplied]

12. Thereafter, an agreement for sale was executed between the complainants and the respondent on 25.05.2022. On page no. 6 of the said agreement (on page no. 41 of complaint), it is clearly mentioned that the total price as mentioned above includes taxes which may be levied in connection with the construction of the project paid/payable by the



promoter upto the date of handing over the possession of the apartment for residential usage along with two wheeler parking, to the allottee or the competent authority as the case may be. The relevant para is reproduced below:-

" ii. The Total Price as mentioned above included Taxes (GST and Cess or any other taxes/fees/charges/levies etc which may be levied, in connection with the construction of the Project(s)0 paid/payable by the promoter up to the date of handing over the possession of the Apartment for Residential usage along with two wheeler parking to the allottee(s) or the competent authority, as the case may be, after obtaining the necessary approvals from the competent authority for the purposes of such possession"

.....[Emphasis supplied]

13. Thereafter, the complainants vide email dated 20.06.2022 requested the respondent that they are interested in the four wheeler parking space and are ready to pay extra charges @5% of the total sale consideration of the unit. The said e-mail is reproduced below:

" We are successful allottees of flat no. T6/807 from waiting list applicant in project "Global Heights-88A" As per HRERA notification we exercise our option to allot 4 wheeler parking space on payment of extra 5% charges of total value of flat.

Kindly, issue demand letter for the same for the payment at the earliest"

.....[Emphasis supplied]

14. Further on 20.06.2022 itself, the respondent replied to the said e-mail of the complainants and has said that the requests for parking were taken into consideration on first come first serve basis and it does not have any parking space left. The said email is reproduced below:

" This is in continuation of the below email wherein you have expressed your interest in four-wheeler parking for the project Global heights 88A. However, the request for parkings were taken into consideration on first come first serve basis and at present we have no unsold inventory.

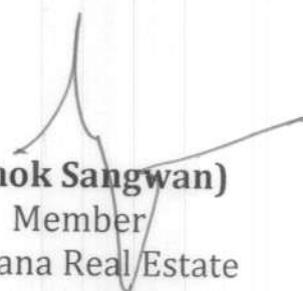
This was conveyed to you during your visit to our office also.

You may leave your request at office and we would consider your request against cancellation if any."

.....[Emphasis supplied]

15. On consideration of the documents available on record and submissions made by both the parties, the authority is of the view that the complaint is liable to be dismissed as the complainants failed to prove the contraventions of the Act on the part of the respondent. There is no provision in the Act, 2016 and the Affordable Housing policy, 2013 which mandated the promoter to provide four wheeler parking space. Furthermore, the complainants rely on the brochure of the project wherein it contained information that four wheeler parking was available in the project. However, in the said brochure it was nowhere projected that the four wheeler parking was available with each unit. The respondent has not promised the said four wheeler parking to the complainants neither is it in the agreement to sale nor in the allotment letter. Hence, the complaint is dismissed on the ground of being devoid on merits.
16. The complaint stands disposed of.
17. File be consigned to registry.

Dated: 03.04.2024



(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram