

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

Complaint no. : 4921 of 2023
Date of filing complaint: 17.11.2023
Order Pronounced On: 28.05.2025

1. Sandeep Fogaat
2. Neeru Fogaat
Address: - T18-601, Gurgaon Greens, Sector-102,
Village DHankot, Gurugram, Haryana

Complainants

Versus

M/s Emaar MGF Land Ltd..
Regd. Office at: ECE House, 28,
Kasturba Gandhi Marg, New Delhi-10001.

Respondent

CORAM:
Shri Ashok Sangwan

Member

APPEARANCE:
Sandeep Fogaat

Complainant in
person
Respondent

J.K Dang (Advocate)

ORDER

1. The present complaint has been filed by the complainants/allottees 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 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. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, 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	Gurgaon Greens, Sector-102, Gurugram.
3.	Nature of project	Residential Group Housing Colony
4.	DTCP license no.	License No. 75 of 2012 Dated-31.07.2012 Validity upto-30.07.2020
5.	RERA registered	Registered 36/9a) of 2017 Dated-05.12.201 Valid up to 31.12.2018
6.	Allotment letter	23.11.2018
7.	Unit no.	18-1061, Tower-18
8.	Unit area	1650 sq.ft
9.	Date of execution of buyer's agreement	30.01.2019
10.	Possession clause	Clause 7 (a) <i>Within 60(sixty) days from the</i>

		<p>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, the Company shall offer the possession of the Unit to the Allottee on or before 31-12-2018 or such time as may be extended by the competent authority.</p>
11.	Due date of possession	31.12.2018
12.	Total consideration	Rs.1,11,46,761/-
13.	Total amount paid by the complainant	Rs.1,11,46,761/-
14.	Occupation certificate	05.12.2018
15.	Offer of possession	24.05.2019

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the complainants booked a 3BHK flat bearing unit no. GGN-18-0601 admeasuring 1650 sq. ft. (super area) and the carpet area admeasuring 1022.58 square feet with One Car Parking space under "Subvention Scheme" and the sale consideration of the said flat is Rs.1,11,46,761/- on 26.10.2018 in its project named as Gurgaon Greens situated at Sector-102, Gurugram and in lieu of the same the complainant has paid a sum of Rs.1,00,000/- to the respondent as a booking amount.
- II. As per the BBA, the due date of handing over possession of the said apartment was 31.12.2018. The unit was supposed to be delivered by 31.12.2018. The complainants wrote an email to the respondent to handover the unit but via email dated 11.04.2019, the respondent denied the possession. After several emails and requests, the respondent offered interim possession of the unit to the complainants on 24.05.2019 in order to carry out the interior fit-outs and handed over the interim possession on 03.07.2019. The respondent misguided the complainants at every single step.
- III. At the time of interim possession, the complainants were living outside India and the same was taken by the SPA holder. As per the interim possession offer letter, the complainants have paid 2 years advance CAM charges amounting Rs.1,70,557/-.
- IV. That the respondent denied to allocate a car parking initially and told that the same would be allotted at the time of final possession in March 2021. After several emails, the respondent allocated the parking B1-16-MLCP. After taking the interim possession, the complainants came to know that allocated car parking is far away

from their flat and near to sewage treatment plant due to which there is severe ground water seepage in the floor and requested to change the parking allocation as many nearby parking slots were available in the project, but the respondent denied the requests. The complainants asked to provide the policy for allocating parking many times but the respondent denied to provide any such information.

- V. Later the complainants came to know that many other apartment owners got parking slot nearby their flats after paying extra amount. The adjoining unit GGN-18-602 situated on the same floor of the complainants got still parking in the same tower after paying extra money to the respondent.
- VI. That the complainants received an email on 10.05.2022 to pay additional cost of Rs.4,50,000/- plus 18% GST to change the parking slot. The respondent earned huge money in parking allocation while the complainants and most of the buyers purchased the flat inclusive of 1(one) car parking space. The respondent allocated parking slots as per their monopoly and earned huge money in parking allocation.
- VII. At the time of interim possession, the complainants requested the respondent about the execution of conveyance deed of the apartment. The respondent denied the request stating that conveyance deed will be executed only after final offer of the possession which was scheduled in March 2021.
- VIII. That the respondent issued final offer of possession on 02.03.2021 and the complainants had cleared all the dues on 01.04.2022 and asked again for the execution of conveyance deed of the said unit. The respondent again denied stating that the complainants has filed

complaint in the Authority(Complaint No. 4457 of 2020) hence they will not execute the conveyance deed of the said unit.

- IX. That CR No. 4457 of 2020 was decided on 22.07.2021 and order was uploaded on 26.10.2021 on HARERA website. The complainants and respondent made and executed settlement agreement on 16.11.2021 and the respondent paid Rs. 2,84,000/- to the complainants for Delay possession compensation till the date of Interim possession i.e. 03.07.2019. As per the settlement Agreement clause 2 (ii) the respondent had to register the conveyance deed of the said unit within 30 days from the execution of the agreement. The respondent again breeched the agreement and trust of the complainants by not registering the conveyance deed of the said unit.
- X. After waiting for a period of 5 months, the complainants again approached the Authority for registration of the conveyance deed of the unit via Cr No. 2513/2022 dated 26.05.2022. The complainant Mr. Sandeep Fogaat was elected President of the Gurgaon Greens Condominium Association on 09.01.2022 and filed case against the respondent in HARERA Gurgaon (Complaint No. 2141/2022) for issues of condominium association and the the Authority has issued an interim order to provide handover to the elected governing body. After that the respondent started harassing the complainants sending legal notices. A legal notice was sent on 07.04.2022 for defamatory suit of Rs.10 (Ten) Crores to the complainants.
- XI. The respondent again sent another legal notice to the complainants on 19.05.2022 for eviction of the flat . In 2019, the stamp duty was 4% for joint owners (Male & Female) while in 2021 it was increased to 5% for joint owners (Male & Female) which put an extra financial burden on the complainants. The respondent tried every way to

mentally torture the complainants and also put extra financial burden.

C. Relief sought by the complainants:

4. The complainants are seeking the following relief(s).
 - (i) Direct the respondent to pay the delayed possession charges along with the prevailing rate of interest from 03.07.2019 to 01.04.2022.
 - (ii) Direct the respondent to allocate a suitable parking without any extra cost and also direct the respondent to provide the parking allocation policy of the project.
5. On the date of hearing, the authority explained to the respondents/promoters about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed.
 - I. 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 30.01.2019, Settlement cum Amendment Agreement dated 16.11.2021 as well as the Indemnity cum Undertaking executed by the complainants at the time of taking interim possession.
 - II. That the complaint is a blatant abuse of the process of law. Complaint no 4457/2020 was instituted by the complainants seeking interest for delay in possession from 31.12.2018 to 03.07.2019, i.e the date of actual possession. The said complaint was allowed by the Authority by its



order dated 22.07.2021 and the complainants were granted DPC for the period from 31.12.2018 to 03.07.2019 @ 9.30% p.a.

- III. That Settlement cum Amendment Agreement dated 16.11.2021 was executed between the parties in terms of which the respondent has paid and the complainants have duly accepted a sum of Rs.2,84,000/- from the respondent in full and final settlement of all their claims against the respondent and undertook not to raise any claim, dispute, demand etc against the respondent.
- IV. That however, in blatant violation of the aforesaid Settlement cum Amendment Agreement dated 16.11.2021, the complainants instituted a second complaint bearing no. 2513 of 2022 whereby the complainants sought allocation of suitable car parking at no extra cost and to provide the parking allocation policy of the respondent. The complainants also prayed for registration of the conveyance deed in their favour.
- V. The said complaint was disposed of by the Authority by its order dated 05.09.2023 whereby it was observed by the Authority at para no. 26 that the complainants had already been allotted the car parking and if the complainants were not satisfied with its location, then they are at liberty to approach the Adjudicating Officer for compensation under Section 14 of the Act.
- VI. That shockingly, instead of approaching the Adjudicating Officer for compensation, the complainants are again approaching the Authority by way of the present complaint. That in so far as execution and registration of the conveyance deed in favour of the complainants is concerned, the complainants have already filed execution petition 5737/2023 seeking execution of the order dated 05.09.2023, which is pending before the Adjudicating Officer.

- VII. That the respondent completed construction of the Tower in which the apartment in question is situated and applied for the Occupation Certificate on 13.04.2018. The Occupation Certificate was issued by the Competent Authority on 05.12.2018.
- VIII. That upon receipt of the Occupation Certificate, the respondent offered possession of the apartment in question to the complainants vide letter dated 24.05.2019. The complainants were given the option to either pay the entire balance sale consideration as per the Buyer's Agreement including the stamp duty, registration charges and other amounts payable as per the Buyer's Agreement and complete the documentation and formalities to enable the respondent to hand over possession of the unit to the complainants. Alternatively, the complainants were offered interim possession of the apartment for fit outs. The complainants opted to take interim possession of the unit.
- IX. That the complainants agreed and undertook that the interim possession was limited possession for the purpose of undertaking fit outs and that the same shall not be deemed to be final possession or transfer of title in favour of the complainants in any manner. In view thereof, the complainants undertook to vacate the unit immediately in the event of default under the Buyer's Agreement or when called upon to do so by the respondent. The complainants further undertook to be fully responsible for complying with all applicable laws, obtaining requisite permissions/approvals from local/statutory/government authorities in connection with interior work and agreed to keep the respondent indemnified against all losses, damages etc that might follow consequent to such interim possession.
- X. That it is pertinent to mention herein that Clause 11(f) of the Buyer's Agreement enumerating the rights and obligations of the allottee,



provides, inter alia, that the complainants cannot undertake any construction in the unit which has the effect of causing structural damage or encroachment to the structure of the building. The complainants cannot change the colour and structure of the external façade of the unit/building/project/group housing colony and alterations in the unit without the permission of the respondent. The complainants are also required to obtain the prior approval and consent of the respondent before undertaking any such construction/alteration. Despite repeated requests, the complainants failed to rectify their default and restore the unit to its original form.

- XI. That thus the respondent was constrained to issue a legal notice dated 19.05.2022 terminating the allotment and calling upon the complainants to hand over vacant possession of the unit to the respondent as well as to pay a sum of Rs.10 lacs towards cost of rectification of the unauthorized construction carried out by the complainants.
- XII. In so far as the registration of the Conveyance Deed in favour of the complainants is concerned, the respondent has already initiated the process for registration of the Conveyance Deed in view of the affidavit tendered by the complainants as well as the order dated 01.08.2023 that the complainants have not carried out any structural changes in the unit.
- XIII. That thus, it is evident that the entire case of the complainants is nothing but a web of lies and the false and frivolous allegations have been made against the respondent. There is no default or lapse on the part of the respondent.
- XIV. That it is submitted that the relief claimed by the complainants is beyond the scope of the Buyer's Agreement, Settlement Agreement and

Indemnity cum Undertaking executed by the complainants. The complainants cannot demand any relief 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.

7. 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 submissions made by the complainant.

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

10. 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;

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.

11. 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 reliefs sought by the complainants:

- F.I Direct the respondent to pay Delayed Possession Charges along with prevailing rate of interest from 03.07.2019 to 01.04.2022.**
- F.II Direct the respondent to allocate a suitable parking without any extra cost and also direct the respondent to provide the parking allocation policy of the project.**
12. The present complaint is dismissed being not maintainable on the ground of res-judicata as the matter in issue between the same parties has already been heard and decided by this Authority vide order dated 22.07.2021 in former complaint bearing no. 4457 of 2020 vide which delay possession charges @9.30% per annum was allowed to the complainants from the due date of possession 31.12.2018 till date of handing over of possession i.e., 03.07.2019. The complainants and the respondent executed a Settlement Agreement on 16.11.2021. Thereafter, the complainants again approached the Authority and filed a complaint bearing no. 2513 of 2022 seeking relief w.r.t allocation of a suitable parking space without any extra cost and execution of Conveyance deed in favour of the complainant. The said complaint was decided vide order dated 05.09.2023 wherein w.r.t the allotment of parking space, the Authority made an observation that the

parking space has already been allotted to the complainants by the respondent and if the complainants are not satisfied with the location, they may approach the Adjudicating Officer for compensation and w.r.t the Conveyance Deed, the Authority directed the respondent to execute the Conveyance deed in favour of the complainants within a period of 60- days from the date of the order.

13. On consideration of the documents available on record and submissions made by the parties, the Authority is of the view that the Authority has already adjudicated on the above mentioned reliefs in the previous complainants filed by the complainants against the respondent and the Authority cannot re-write its own orders and lacks the jurisdiction to review its own order as the matter in issue between the same parties has been heard and decided by this Authority in the former complaints bearing no. **4457 of 2020** and **2513 of 2022**. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be fetched to an extent that basic principles of jurisprudence are to be ignored. Therefore, subsequent complaint on same cause of action is barred by the principle of res-judicata as provided under Section 11 of the Code of Civil Procedure, 1908 (CPC). Section 11 CPC is reproduced as under for ready reference:

"11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The expression "former suit" shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating .

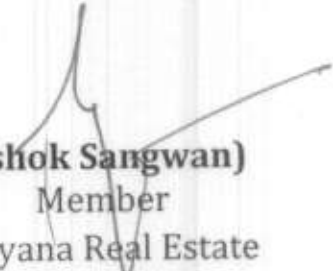
1[Explanation VII.—The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII. —An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]”

14. The Authority is of view that though the provisions of the Code of Civil Procedure, 1908 (CPC) is, as such, not applicable to the proceedings under the Act, save and except certain provisions of the CPC, which have been specifically incorporated in the Act, yet the principles provided therein are the important guiding factors and the Authority being bound by the principles of natural justice, equity and good conscience has to consider and adopt such established principles of CPC as may be necessary for it to do complete justice. Moreover, there is no bar in applying provisions of CPC to the proceedings under the act if such provision is based upon justice, equity and good conscience.
15. Thus, in view of the factual as well as legal provisions, the present complaint stands dismissed being not maintainable.

16. File be consigned to the registry.

Dated: 28.05.2025


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



HARERA
GURUGRAM