



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

**COMPLAINT NO. 330 OF 2018**

Ajaypal

....COMPLAINANT

VERSUS

Ansal Buildwell Ltd.

....RESPONDENT

**CORAM:** Rajan Gupta  
Anil Kumar Panwar  
Dilbag Singh Sihag

Chairman  
Member  
Member

**Date of Hearing:** 18.11.2020

**Hearing:** 18<sup>th</sup>

**Present:** - Sh. Kamal Dhaiya, counsel for complainant  
Sh. Rohan Gupta, counsel for respondent

**ORDER (ANIL KUMAR PANWAR- MEMBER)**

1. This Authority vide its order dated 22.11.2018 had already settled all other disputes raised by the complainant except the issue relating to Open Car Parking charges amounting to Rs. 75000/-.

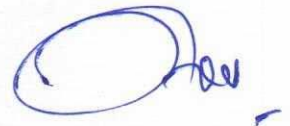
2. The Authority had prima-facie observed in its order dated 04.03.2020 that no part of the common area can be allowed to be sold by a promoter, and therefore, an opportunity was afforded to the promoter of this case to justify the parking charges of Rs. 75,000/- being charged from the complainant.

3. Learned counsel for the respondent has today argued on the strength of the judgment of the Hon'ble Supreme Court passed in Civil Appeal No. 6303 of 2019 – titled as “Wg. Cdr. Arifur Rahman Khan and others Versus M/s DLF Southern Homes Pvt. Ltd.” that open car parking charges are payable by the complainant. The Authority does not find the cited ruling to be helpful to the respondent because the precise question involved therein was not in respect of the parking charges levied for a space located on such area of the project which is meant for use by all the allottees of the project. The issue involved in the citing ruling was concerning parking charges which were being levied in terms of the Builder Buyer Agreement entered between the parties. The crucial question in the present case is as to whether or not the respondent can levy the charges from the complainant in the guise of parking charges by earmarking a space in the open



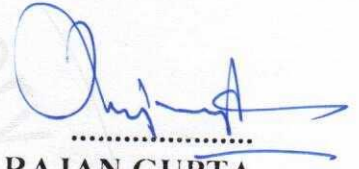
area of the project. It needs no emphasis that a promoter after development and completion of the project is duty bound to handover the common areas to the Residential Welfare Association and he thus has no right to assign any part common areas to any individual allottee. Any act on his part to sell a part of common areas will result in depriving the use of such sold part by other allottees of the project. So, the promoter neither has a right to allocate any space of the common area to a particular allottee nor can levy charges from any allottee on the pretext of allocating a specific space to him in the common area for parking of vehicle.

4. As a matter of fact, the Hon'ble Supreme Court in the case titled as Nahal Chand Laloo Chand Private Limited Versus Panchali Cooperative Housing Society Limited : AIR-2010-SCC-3607 had an occasion to decide on similar issue and has therein ruled that the promoter cannot be allowed to sell any space for open parking out of the land which forms the part of common areas of the project. So, the Authority, has no hesitation in concluding that the respondent for the reason that he has not provided any earmarked space to the complainant out of the saleable area of the project and is demanding charges for car parking in respect of a space which is part of the common area, has no right to levy parking charging. The amount of Rs. 75,000/- demanded from the complainant on account of open car parking charges thus cannot be allowed and is hereby quashed.



4. The present complaint is hereby disposed of with a direction to the respondent to revise the impugned demands in consonance with the findings recorded by this Authority.

File be consigned to the record room after uploading the orders on the website of the Authority.



RAJAN GUPTA  
[CHAIRMAN]



ANIL KUMAR PANWAR  
[MEMBER]



DILBAG SINGH SIHAG  
[MEMBER]