BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**3278 of 2020**
Complaint filed on	**:**	**19.10.2020**
First date of hearing	**:**	**09.12.2020**
Date of decision	**:**	**18.02.2022**

Govind Singh
R/o: Flat no. 602, Block A, Puri Diplomatic Green,
Sector 111, Dwarka Expressway,
Gurugram, Haryana-122001. **Complainant**

Versus

M/s Emaar MGF Land Ltd.
Address: 306-308, 3rd floor, Square One,
C2, District Centre, Saket, New Delhi -110017. **Respondent**

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

APPEARANCE:
Shri Jagdeep Kumar Advocate for the complainant
Shri J.K. Dang Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainant/allottee in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.

A. Project and unit related details

2. The particulars of the project, the details of 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:

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	05.12.2018 [annexure R8, page 120 of reply]
9.	Provisional allotment letter dated	27.01.2013 [annexure P1, page 38 of complaint]
10.	Unit no.	GGN-15-0902, 9th floor, tower no. 15 [annexure P2, page 52 of complaint]
11.	Unit measuring	1650 sq. ft.
12.	Date of execution of buyer's agreement	04.04.2013 [annexure P2, page 49 of complaint]
13.	Payment plan	Construction linked payment plan [Page 80 of complaint]

14.	Total consideration as per statement of account dated 10.12.2020 at page 115 of reply	Rs.1,21,56,962/-
15.	Total amount paid by the complainant as per statement of account dated 10.12.2020 at page 116 of reply	Rs.1,22,22,282/-
16.	Date of start of construction as per statement of account dated 10.12.2020 at page 115 of reply	14.06.2013
17.	Due date of delivery of possession as per clause 14(a) of the said agreement i.e. 36 months from the date of start of construction (14.06.2013) + grace period of 5 months, for applying and obtaining completion certificate/ occupation certificate in respect of the unit and/or the project. [Page 65 of complaint]	14.06.2016 **[Note:** Grace period is not included]
18.	Date of offer of possession to the complainant	13.12.2018 [annexure P3, page 99 of complaint]
19.	Delay in handing over possession w.e.f. 14.06.2016 till 13.02.2019 i.e. date of offer of possession (13.12.2018) + 2 months	2 years 7 months 30 days
20.	Delay compensation already paid by the respondent in terms of the buyer's agreement as per statement of account dated 10.12.2020 at page 115 of reply	Rs.3,08,799/-
21.	Unit handover letter	04.06.2019 [annexure R14, page 130 of reply]
22.	Conveyance deed executed on	07.08.2019 [annexure R15, page 134 of reply]

B. Facts of the complaint

3. The complainant made following submissions in the complaint:

i. That somewhere in the starting of 2012, the respondent through its business development associate approached the complainant with an offer to invest and buy a flat in the proposed project of the respondent. On 26.08.2012, the complainant 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 9th floor in tower 15 which was a unit consisting area of 1650 sq. ft. It was represented 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 the complainant within one week of booking. The complainant, relying upon those assurances and believing them to be true, booked a residential flat bearing no. 0902 on 9th floor in tower 15 in the proposed project of the respondent measuring

approximately super area of 1650 sq. ft. Accordingly, the complainant has paid Rs. 7,50,000/- as booking amount on 26.08.2012.

ii. That on 27.01.2013, approximately after one year, the respondent issued a provisional allotment letter containing very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature because every clause was drafted in a one-sided way and a single breach of unilateral terms of provisional allotment letter by the complainant, will cost forfeiture of 15% of total consideration value of unit. Respondent exceptionally increased the net consideration value of flat by adding EDC, IDC and PLC and when complainant opposed the unfair trade practices of respondent, he was informed that EDC, IDC and PLC are just the government levies, and they are as per the standard rules of government. Further, the delay payment charges will be imposed @ 24% which is standard rule of company and company will also compensate at the rate of Rs. 7.50/- per sq. ft. per month in case of delay in possession of flat by company. Complainant opposed these illegal, arbitrary, unilateral and discriminatory terms of provisional allotment letter but there was no other option left with the complainant because if they stop the further payment of installments then in that case, respondent may forfeit 15% of total consideration value from the total amount paid

by the complainant. Thereafter, on 04.04.2013 the buyer's agreement was executed on similar illegal, arbitrary, unilateral and discriminatory terms narrated by respondent in provisional allotment letter.

iii. That as per the clause 14 of the buyer's agreement dated 04.04.2013, the respondent had agreed and promised to complete the construction of the said flat and deliver its possession within a period of 36 months with a five (5) months grace period thereon from the date of start of construction. The proposed possession date as per buyer's agreement was due on 14.11.2016. 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 as per annexure-III (Schedule of Payments) of buyer's agreement, the total sale consideration of the said flat was Rs.1,13,96,750/- (exclusive of service tax and GST but includes the charges towards the basic price- Rs.98,98,350/-, car parking Rs.3,00,000/-, Governmental charges (EDC & IDC) Rs.5,70,900/-, club membership Rs.50,000/-, IFMS Rs.82,500/- and PLC for central park of Rs.4,95,000/-). But later at the time of possession, the respondent increased the sale consideration to Rs.1,14,26,843/- without any reason for the same, and respondent also charged IFMS @ Rs.82,500/- separately, whereas IFMS

charges were already included in sale consideration and that way respondent charged IFMS twice from complainant. In total, the respondent increased the sale consideration by Rs.1,12,593/- (Rs.30,093/- + Rs.82,500/-) without any reason which is illegal, arbitrary, unilateral and unfair trade practice. Complainant opposed the increase in sales consideration at time of possession, but respondent did not pay any attention towards their claims.

v. That as per the statement dated 02.09.2020, issued by the respondent, the complainant has already paid Rs.1,18,69,798/- towards total sale consideration as demanded by the respondent from time to time and now nothing is pending to be paid on the part of complainant.

vi. That the possession was offered by respondent through letter "Intimation of Possession" dated 13.12.2018 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. At the time of offer of possession, builder did not adjusted the penalty for delay possession. Respondent demanded Rs.1,44,540/- towards two-year advance maintenance charges from complainant which was never agreed under the buyer's agreement and respondent also demanded a lien marked FD of Rs. 3,59,579/- on pretext of future liability against HVAT which are also unfair trade practice.

vii. That respondent left no other option to complainant, but to pay the payment of two-year maintenance charges Rs. 1,44,540/- and fixed deposit of Rs.3,59,579/- with a lien marked in favour of Emaar MGF Land Limited and Rs.5,34,700/- towards e-stamp duty and Rs.50,000 towards registration charges of above said unit in addition to final demand raised by respondent along with offer of possession. Respondent gave physical handover of aforesaid property on 04.06.2019.

viii. That after doing inspection of flat in April 2019, the complainant also identified some major structural changes which were done by respondent in project in comparison to features of project narrated to the complainant on 26.08.2012 at the office of respondent. Now, the tower no. 23, 24, 25, 26, 27 consists of G+14 floors in comparison to G+13 floors informed at the time of booking. 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'. Joggers park does not exist whereas respondent charged Rs.3,33,000/- from complainant on the pretext of PLC for joggers park. The respondent also charged PLC of Rs.4,95,000/- from them on pretext of unit facing central park whereas from complainant's flat, it is just a partial view. The unit in question being at 9th floor, view of central park is obstructed by tower 19, 20 & 21 and the complainant reported the same to the

respondent and asked refund of the said amount (PLC charged for central greens i.e. Rs.4,95,000) but respondent never answered the complainants' grievance. Most of the amenities does not exist in project whereas it was highlight at the time of booking of flat. 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 charged exceptionally high PLC from complainant without even transferring the ownership rights of amenities to complainant on the common area of project. Respondent compelled almost every flat owner (total 672) through unilateral buyer's agreement to pay PLC of Rs. 4,95,000/- for central park whereas respondent sold car parking of Rs.3,00,000/- each underneath central park, this way respondent sold same area twice to residents and collected exceptionally high and unilateral and unjustified PLC from complainant. Respondent only spread grass on roof of covered parking area and sell it as "central green" at exceptionally high rate of Rs.4,95,000/- each.

x. 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 was going to handover to the complainant.

xi. That the respondent compelled the complainant to pay two-year advance maintenance of Rs.1,44,000/- (@Rs.3.63 per sq. ft. per month) before taking the physical possession of flat which is a unilateral demand of 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 complainant for electricity supplied by the distribution licensee (DHBVN) 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 complainant 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 charge was claimed by the distribution licensee (DHBVN) electricity supplying agency. Respondent charge 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.

xii. That the cause of action accrued in the favour of the complainant and against the respondent on 26.08.2012 when the said flat was booked by the complainant, 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

4. The complainant has filed the present compliant for seeking following relief:

i. Direct the respondent to pay interest at the applicable rate on account of delay in offering possession on amount paid by the complainant from the date of payment till the date of delivery of possession.

ii. Direct the respondent to return Rs.1,12,593/- unreasonably charged by respondent by increasing sale price after execution of buyer' s agreement.

iii. Direct the respondent to refund PLC of Rs.4,95,000/- for 'central park' collected from the complainant.

iv. Direct the respondent to return the total advance amount taken by the respondent on account of maintenance charges.

v. Direct the respondent to issue necessary instruction to complainant's bank to remove the lien marked over fixed deposit of Rs.3,59,579/- in favour of the respondent on the pretext of future payment of HVAT.

vi. Direct the respondent to show the actual records of paying EDC and IDC to government and return the excess amount collected from complainant.

vii. Restrain the respondent to charge fixed monthly charges for electricity and restrain respondent to charge common area electricity charges till respondent did not submit the actual consumption of electricity at common area and till respondent installed a temporary electricity meter from electricity distributor licensee (DHBVN) for their pending project activity.

viii. Direct the respondent to charge electricity charges in accordance with consumptions of units by complainant and restrain the

respondent from charging fixed minimum charges on electricity meters.

ix. Direct the respondent to get the flat measurement done by independent architect and furnish report of actual size of flat to complainant and adjust the cost in accordance with actual size delivered to the complainant.

5. 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

6. 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. Moreover, the adjudicating officer derives his jurisdiction from the central statute which cannot be negated by the rules made thereunder.

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 04.04.2013. 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. The provisions of the Act relied upon by the complainant for seeking interest or compensation cannot be called in to aid in derogation and in negation of the provisions of the buyer's agreement. The complainant cannot claim any relief which is not contemplated under the provisions of the buyer's agreement. Assuming, without in manner admitting any delay on the part of the respondent in delivering possession, it is submitted that the interest for the alleged delay demanded by the complainant 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.

iii. That the complainant vide an application form applied to the respondent for provisional allotment of a unit in the project. The complainant, in pursuance of the aforesaid application form, was allotted an independent unit bearing no. GGN-15-0902, located on the ninth floor, in the project vide provisional allotment letter dated 27.01.2013. The complainant consciously and willfully opted

for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that he shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant and proceeded to allot the unit in question in their favor. Thereafter, the buyer's agreement dated 04.04.2013 was executed between the complainant and the respondent.

iv. That the complainant was irregular in payment of instalments. The respondent was constrained to issue reminders and letters to the complainant requesting him to make payment of demanded amounts. Several payment request letters, reminders etc. had been got sent to the complainant by the respondent clearly mentioning the amount that was outstanding and the due date for remittance of the respective amounts as per the schedule of payments, requesting the complainant to timely discharge his outstanding financial liability but to no avail. Statement of account dated 10.12.2020 as maintained by the respondent in due course of its business depicting delay in remittance of various payments by the complainant.

v. That since the complainant was not forthcoming with the outstanding amounts, the respondent was constrained to issue final notice dated 09.05.2017 to him. The respondent had

categorically notified the complainant that he has defaulted in remittance of the amounts due and payable by him. It was further conveyed by the respondent to the complainant that in the event of failure to remit the amounts mentioned in the said notice, the respondent would be constrained to cancel the provisional allotment of the unit in question.

vi. That upon receipt of the aforesaid final notice issued by the respondent, the complainant approached the respondent requesting it to not give effect to the said notice and further promised the respondent that he would remit the remaining instalments on time. The complainant further promised that he would not stake any claim against the respondent on account of delay, if any. The respondent did not have any reason to suspect the bona fide of the complainant and consequently desisted from cancellation of the provisional allotment issued in his favour. It needs to be taken into reckoning that the respondent has refrained from cancellation of the allotment issued in favour of the complainant relying upon his deliberate representations. The complainant is estopped from claiming any compensation or interest in the facts and circumstances of the case.

vii. That the complainant consciously and maliciously chose to ignore the payment request letters and reminders issued by the respondent and flouted in making timely payments of the

instalments which was an essential, crucial and an indispensable requirement under the buyer's agreement. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially and further causes enormous business losses to the respondent. The complainant chose to ignore all these aspects and wilfully defaulted in making timely payments. It is submitted that the respondent despite defaults of several allottees earnestly fulfilled its obligations under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. Therefore, there is no equity in favour of the complainant.

viii. That clause 14(b)(v) of the buyer's agreement provides that in the event of any default or delay in payment of instalments as per the schedule of payments incorporated in the buyer's agreement, the time for delivery of possession shall also stand extended. Clause 16 of the buyer's agreement further provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement. It is submitted that the complainant has defaulted in

timely remittance of the instalments and hence the date of delivery option is not liable to determine the matter sought to be done by the complainant. The complainant is conscious and aware of the said agreement and has filed the present complaint to harass the respondent and compel the respondent to surrender to his illegal demands. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.

ix. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The respondent has applied for occupation certificate on 13.04.2018. Occupation certificate was thereafter issued in favour of the respondent vide memo bearing no. ZP-835/AD(RA)/2018/33193 dated 05.12.2018. It is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore,

the time period utilised by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilised for implementation and development of the project.

x. That the construction of the project/allotted unit in question stands completed and the respondent has already offered possession of the unit in question to the complainant. Furthermore, the project of the respondent has been registered under the Act and the rules. Registration certificate was granted by the Haryana Real Estate Regulatory Authority vide memo no. HRERA-139/2017/2294 dated 05.12.2017. It is pertinent to mention that the respondent had applied for extension of the registration and the validity of registration certificate was extended till 31.12.2019. However, since the respondent has delivered possession of the units comprised in the relevant part of the project, the registration of the same has not been extended thereafter.

xi. That the complainant was offered possession of the unit in question through letter of offer of possession dated 13.12.2018. The complainant was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainant. However, the complainant

approached the respondent with request for payment of compensation for the alleged delay in utter disregard of the terms and conditions of the buyer's agreement. The respondent explained to the complainant that he is not entitled to any compensation in terms of the buyer's agreement on account of default in timely remittance of instalments as per schedule of payment incorporated in the buyer's agreement. The respondent earnestly requested the complainant to obtain possession of the unit in question and further requested the complainant to execute a conveyance deed in respect of the unit in question after completing all the formalities regarding delivery of possession. However, the complainant did not pay any heed to the legitimate, just and fair requests of the respondent and threatened the respondent with institution of unwarranted litigation. The respondent in order to settle the unwarranted controversy needlessly instigated by the complainant proceeded to credit an amount of Rs. 3,08,799/- to the account of the complainant in full and final satisfaction of his alleged grievances.

xii. That the complainant did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the buyer's agreement and consequently in order to needlessly linger on the matter, the complainant refrained from obtaining possession of the unit in question. The complainant needlessly

avoided the completion of the transaction with the intent of evading the consequences enumerated in the buyer's agreement. Therefore, there is no equity in favour of the complainant. It is pertinent to note that an offer for possession marks termination of the period of delay, if any. The complainant is not entitled to contend that the alleged period of delay continued even after receipt of offer for possession. The complainant has consciously and maliciously refrained from obtaining possession of the unit in question. Consequently, the complainant is liable for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession.

xiii. That after receipt of the aforesaid amount, the complainant approached the respondent requesting it to deliver the possession of the unit in question. A unit handover letter dated 04.06.2019 was executed by the complainant, specifically and expressly agreeing that the liabilities and obligations of the respondent as enumerated in the allotment letter or the buyer's agreement stand satisfied. The complainant has intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from its commitments. No cause of action has arisen or subsists in favour of the complainant to institute or prosecute the instant complaint. The complainant has preferred the instant

complaint on absolutely false and extraneous grounds in order to needlessly victimise and harass the respondent.

xiv. That after execution of the unit handover letter dated 04.06.2019 and obtaining of possession of the unit in question, the complainant is left with no right, entitlement or claim against the respondent. It needs to be highlighted that the complainant has further executed a conveyance deed dated 07.08.2019 in respect of the unit in question. The transaction between the complainant and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainant against the other. It is pertinent to take into reckoning that the complainant has obtained possession of the unit in question and has executed conveyance deed in respect thereof, after receipt of the amount of Rs. 3,08,799/- from the respondent. The contentions advanced by the complainant in the false and frivolous complaint are barred by estoppel.

xv. That the respondent denied that IFMS amount has been charged twice from the complainant. It is wrong and denied that the sale consideration has been increased by Rs. 1,12,576/-. The sale consideration amount does not include applicable taxes, stamp duty, registration charges and interest on delayed payments. It is absolutely wrong and emphatically denied that the respondent has adopted any illegal, arbitrary, unilateral or unfair trade practice.

On the contrary, all the demands raised by the respondent are strictly in accordance with the buyer's agreement.

xvi. That the respondent denied that it is not entitled to demand maintenance charges from the complainant. On the contrary, in accordance with clause 21 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.

xvii. That insofar as HVAT is concerned, it is denied that the respondent is not entitled to demand the lien marked over the fixed deposit furnished by the complainant towards VAT liability which is payable by the complainant under the buyer's agreement. Once the VAT liability is finally determined, after payment towards the same, any excess amount shall be duly refunded to the complainant and any shortfall shall be accordingly demanded from the complainant. It is pertinent to mention that the complainant is 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. Furthermore, although these amounts are collected by the respondent, the respondent does not retain the same and is merely a channel through which the said amounts are ultimately received by the government. It is absolutely wrong and

emphatically denied that the respondent has adopted any unfair trade practice.

xviii. That insofar the PLC is concerned, these charges are applicable to apartments which are located preferentially. The quantum of PLC charged by the respondent is a matter of record. The PLC is not a government levy but a premium payable upon apartments which are preferentially located. The respondent denied that the central greens are not visible from the said unit. It is wrong and denied that the view of the central park is obstructed. It is wrong and denied that the respondent is liable to refund the PLC charge to the complainant. The said unit is facing the Central Green and consequently PLC is applicable. It is wrong and denied that PLC is liable to be refunded. It is wrong and denied that the area of the Central Park was stated to be 8 acres. It is wrong and denied that the joggers park does not exist on site. It is wrong and denied that the PLC amount charged by the respondent for the joggers park is liable to be refunded to the complainant. That the respondent has duly constructed the project in accordance with the plans duly sanctioned and 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. It is submitted that the complainant had voluntarily and consciously requested

the respondent for are preferentially located unit in the project. The quantum of PLC charged by the respondent is a matter of record.

xix. That several allottees, including the complainant has defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualization and development of the said project. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. Therefore, there is no default or lapse on the part of the respondent and there in no equity in favour of the complainant. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. Based on the above submissions, the respondent asserted 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.

E. Jurisdiction of the authority

8. 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.

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 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

10. 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.

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 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 complainant at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

12. The respondent contended that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The respondent further submitted that the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of buyer's agreement duly executed prior to coming into effect of the Act.

13. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** which provides as under:

> *"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....*
>
> *122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

14. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

> *"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

15. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the buyer's agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of the Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature.

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

16. 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 13.04.2018 and thereafter vide memo no. ZP-835-AD(RA)/2018/33193 dated 05.12.2018, 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 05.12.2018 that an incomplete application for grant of OC was applied on 13.04.2018 as fire NOC from the competent authority was granted only on 21.11.2018 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 11.10.2018. The District Town Planner, Gurugram and Senior Town Planner, Gurugram has submitted requisite report about this project on 31.10.2018 and 02.11.2018 respectively. As such, the application submitted on 13.04.2018 was incomplete and an incomplete application is no application in the eyes of law.

17. 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 21.11.2018 and consequently the concerned authority has granted occupation certificate on 05.12.2018. Therefore, in view of the deficiency in the said application dated 13.04.2018 and aforesaid reasons, no delay in granting occupation certificate can be attributed to the concerned statutory authority.

F.III 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.

18. The respondent contended that at the time of taking possession of the subject unit vide unit hand over letter dated 04.06.2019, the complainant has certified himself to be fully satisfied with regard to the measurements, location, direction, developments et cetera of the unit and also admitted and acknowledge that he does 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."*

19. 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 complainant from exercising their right to claim delay possession charges as per the provisions of the Act.

In light of the aforesaid order, the complainant is entitled to delay possession charges as per provisions of the Act despite signing of indemnity at the time of possession or unit handover letter.

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

20. The respondent submitted that the complainant has executed the conveyance deed on 07.08.2019 and therefore, the transaction between the complainant and the respondent has been concluded and no right or liability can be asserted by respondent or the complainant against the other. Therefore, the complainant is 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.

21. 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."*

22. 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 complainant cannot be precluded from his right to seek delay possession charges from the respondent-promoter.

G. Findings on the reliefs sought by the complainant

G.I Delay possession charges

23. **Relief sought by the complainant**: Direct the respondent to pay interest at the applicable rate on account of delay in offering possession on amount paid by the complainant from the date of payment till the date of delivery of possession.

24. In the present complaint, the complainant intends to continue with the project and is 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."*

25. Clause 14(a) of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

> **"14. POSSESSION**
>
> ***(a)*** **Time of handing over the possession**
>
> *Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company. The Company proposes to hand over the possession of the Unit within 36 (Thirty Six) months from the date of start of construction., subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 5 (five) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project."*

26. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such

conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

27. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 (thirty-six) months from the date of start of construction and further provided in agreement that promoter shall be entitled to a grace period of 5 months for applying and obtaining completion certificate/occupation certificate in respect of said unit. The date of start of construction is 14.06.2013 as per statement of account dated 10.12.2020. The period of 36 months expired on 14.06.2016. As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/ occupation certificate within the time limit (36 months) prescribed by the promoter in the buyer's

agreement. The promoter has moved the application for issuance of occupation certificate only on 13.04.2018 when the period of 36 months has already expired. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, the benefit of grace period of 5 months cannot be allowed to the promoter due to aforesaid reasons.

28. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate. 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.*

29. 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.

30. Taking the case from another angle, the complainant-allottee was entitled to the delayed possession charges/interest only at the rate of Rs.7.50/- per sq. ft. per month of the super area as per clause 16 of the buyer's agreement for the period of such delay; whereas, as per clause 13 of the buyer's agreement, the promoter was entitled to interest @ 24% per annum at the time of every succeeding instalment from the due date of instalment till date of payment on account for the delayed payments by the allottee. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominant position and to exploit the needs of the home buyers. This authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the buyer's agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on

the part of the promoter. These types of discriminatory terms and conditions of the buyer's agreement will not be final and binding.

31. 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., 18.02.2022 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

32. **Rate of interest to be paid by the complainant in case of delay in making payments-** 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:

> *"(za) "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;"*

33. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondent/ promoter which is the same as is being granted to the complainant in case of delayed possession charges.

34. 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 14(a) of the buyer's agreement executed between the parties on 04.04.2013, the possession of the subject flat was to be delivered within a period of 36 months from the date of start of construction plus 5 months grace period for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project. The construction was started on 14.06.2013. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 14.06.2016. Occupation certificate was granted by the concerned authority on 05.12.2018 and thereafter, the possession of the subject flat was offered to the complainant on 13.12.2018. 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 flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 04.04.2013 to hand over the possession within the stipulated period.

35. 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 05.12.2018. The respondent offered the possession of the unit in question to the complainant only on 13.12.2018, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 14.06.2016 till the expiry of 2 months from the date of offer of possession (13.12.2018) which comes out to be 13.02.2019.

36. 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. 9.30% p.a. w.e.f. 14.06.2016 till 13.02.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

37. Also, the amount of Rs. 3,08,799/- (as per statement of account dated 10.12.2020) so paid by the respondent to the complainant towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

H.II Return of amount unreasonably charged by increasing sale price.

38. **Relief sought by the complainant:** Direct the respondent to return Rs.1,12,593/- unreasonably charged by the respondent by increasing sale price after execution of buyer's agreement between the respondent and the complainant.

39. 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 sales consideration exclusive of ST and GST is Rs.1,13,96,750/- (which includes IFMS of Rs.82,500/-) but later at the time of intimation of possession, the respondent increased it to Rs.1,14,26,843/- without any reason for the same. The respondent also charged IFMS of Rs.82,500/- separately, whereas IFMS charges were already included in sale consideration and that way respondent charged IFMS twice from complainant. In total respondent increased the sale consideration by Rs.1,12,593/ (Rs.30,093/ +Rs.82,500/). 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 and it was also denied that IFMS charges have been collected twice.

40. The authority observes that as per Annexure-III (Schedule of Payments) of buyer's agreement, the IFMS was payable along with the last instalment and in fact, the same was demanded by the respondent vide 'Letter of Offer of Possession' dated 13.12.2018 i.e., last instalment.

The authority observes that per schedule of payment annexed with the buyer's agreement (annexure P3, page 80 of complaint), the total sale consideration is Rs.1,13,96,750/- which is inclusive of basic sale price, EDC and IDC, club membership, IFMS, car parking, PLC and additional charges. Whereas as per statement of account dated 10.12.2019 (annexure P6, page 109 of complaint), the sale consideration has been increased to Rs.1,14,26,843/- i.e., an increase of Rs.30,093/-. Further IFMS of Rs.82,500/- has also been again added. Accordingly, Rs.1,12,593/- have been charged extra. Therefore, the respondent is directed to delete the said amount from the total sale consideration.

H.III Preferential Location Charges (PLC)

41. **Relief sought by the complainant:** Direct the respondent to refund PLC of 'Central Park' of Rs.4,95,000/- collected from the complainant.

42. The complainant has raised the question about the justification of preferential location charges raised by the promoter. Admittedly the complainant made the payment of Rs.4,95,000/- as 'Preferential

Location Charges' towards the commitment to have central green. The complainant is seeking refund of the entire amount along with reasonable interest paid towards PLC as the view of central park is obstructed by some towers and the unit is not preferentially located. The respondent contended that the quantum of PLC charged by the respondent is matter of record and denied that the central green area is not visible from the unit in question. Moreover, preferential location of the unit is not exclusive to the ocular aspect thereof.

43. Needless to say, that the agreement for sale/BBA executed between the parties i.e. the promoter and the allottee is binding on them and they are not entitled to avoid any term or condition contained herein except those terms or conditions which are against the public policy or where there are reasons to believe that the same were incorporated in the agreement by the promoter by taking benefit of his being in dominant position and the allottee had no option but to sign on the dotted lines. PLC is to be dealt as per the provisions of the buyer's agreement dated 04.04.2013, where the said agreement have been entered into before coming into force of the Act. As per clause 1.2(e)(i) of the buyer's agreement, the following provisions have been made regarding PLC:

> *"**1.2(e) Preferential Location Charges***
> *(i) The proportionate amount of the preferential location charges ('**PLC**') for certain units in the Project which inter alia would be charged for Central Greens for Rs.4,95,000/- and if the Allottee opts for any such Unit, the PLC for the same shall be included in the Total*

Consideration payable by the Allottee as set out in clause 1.2(a)(i) above for the said Unit.

(ii) The Allottee understands that if due to change in layout plan, the location of any Unit, whether preferentially located or otherwise is changed to any other preferential location, where the PLC are higher than the rate as mentioned hereinabove, then in such a case the Allottee shall be liable to pay the PLC as per the revised PLC decided by the Company within thirty (30) days of any such communication received by the Allottee in this regard. However, if due to the change in the layout plan the Unit ceases to be preferentially located, then in such an event the Company shall be liable to refund only the amount of PLC paid by the Allottee without any interest and/or compensation and/or damages and/or costs of any nature whatsoever and such refund shall be adjusted in the following installment for the Unit."

44. On the date of hearing i.e., 19.10.2021, local commission was appointed with respect to the preferential location of the unit and the local commission has submitted the report on 13.12.2021. The relevant portion of the report is reproduced below:

"6. CONCLUSION:

The site of project named "Gurgaon Greens" being developed by M/s Emaar MGF Land Limited has been inspected and it is found that:

1. *In the unit no. 901 Tower 15, the central green is not clearly visible from the centre of the balcony whereas the central green can be viewed from one of the extreme corners of the balcony.*
2. *In the unit no. 902 Tower 15, the central green is not clearly visible from the centre of the balcony whereas the central green can be viewed from one of the extreme corners of the balcony.*
3. *In the unit no. 302 of Tower 25, the view of central green from the balcony of unit is completely obstructed by the community building/ shopping.*
4. *In the unit no. 202 of Tower 25, the view of central green from the balcony of unit is completely obstructed by the community building/ shopping whereas the promoter has developed a green area along with fountain on the ground level which is visible from the balcony of the unit."*

45. In the present complaint, the unit no. 902 is located in tower 15. As per report of Local Commission, the view of central green from the balcony

of unit is not clearly visible from the centre of the balcony whereas the central green can be viewed from one of the extreme corners of the balcony. Therefore, in light of the said report, the authority is of the view that as the unit in question has ceased to be preferentially located, the respondent is directed to return the amount of Rs.4,95,000/- so collected towards PLC "Centra Greens".

H.IV Advance maintenance charges

46. **Relief sought by the complainant:** Direct the respondent to refund the total advance amount taken by the respondent on account of maintenance charges.

47. With respect to the relief sought by the complainant regarding advance maintenance charges, the relevant clause of the buyer's agreement is as follows:

> *"21. MAINTENANCE*
> *(a) The Allottee hereby agrees and undertakes to enter into a separate Maintenance Agreement as per the draft provided as Annexure-IX 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 Project, its common areas, utilities, equipment installed in the Building and such other facilities forming part of the Project. 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. The Company reserves the right to change, modify, amend and impose additional conditions in the Tripartite Maintenance Agreement at its sole discretion from time to time" (Emphasis supplied)*

48. The grievance of the complainant is that the respondent compelled them to pay 2 years advance maintenance charges i.e. a sum of Rs.1,44,540/- (@ Rs.3.63 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.

49. 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.

50. 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 21 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 13.12.2018, the respondent has demanded Rs.1,44,540/- towards advance maintenance charges (@ Rs.3.65 per sq. ft.) for period of 24 months.

51. 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 complainant.

H.V Whether respondent is justified in creating lien over fixed deposit on pretext of future payment of HVAT

52. **Relief sought by the complainant:** Direct the respondent to issue necessary instructions to the complainant's bank to remove lien marked over FD of Rs. 3,59,579/- in favour of the respondent on the pretext of future payment of HVAT.

53. The complainant submitted that the respondent has demanded a lien marked FD of Rs. 3,59,579/- in favour of the respondent on the pretext of future liability of HVAT along with letter of offer of possession. The complainant contended that the respondent left him with no other option but to make the payment of 2-year maintenance charges, FD with a lien marked in favour of respondent, e-stamp duty, registration charges in addition to final demands raised by the respondent along

with the offer of possession. On the other hand, the respondent had submitted that all the amounts demanded from the complainant at the time of offer of possession had been demanded in accordance with the terms and conditions incorporated in the buyer's agreement. In any case, the complainant had accepted the demands of the respondent and has already remitted the amounts mentioned in the corresponding paragraph of the complaint. The complainant has admitted his obligation to discharge HVAT liability thereunder.

54. The authority has decided this 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 promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, the promoter cannot charge any VAT from the allottees/prospective buyers for the period 01.04.2014 to 30.06.2017 as the same was to be borne by the promoter-developer only. The respondent-promoter is bound to adjust the said amount, if charged from the allottee with the dues payable by him or refund the amount if no dues are payable by him.

55. In the present complaint, the respondent has not charged any amount towards HVAT for the period of 01.04.2014 till 30.06.2017, however, vide letter of offer of possession dated 13.12.2018 has demanded lien marked FD of Rs. 3,59,579/- towards future liability of HVAT for liability post 01.04.2014 till 30.06.2017. In light of judgement stated

above, the respondent shall not demand the same and the lien so marked be removed. Information about the same be also sent to the concerned bank by the respondent as well as complainant along with copy of this order.

G.VI Records of EDC & IDC, flat measurement and electricity charges

56. **Reliefs sought by the complainant:**

i. Direct the respondent to show the actual records of paying EDC and IDC to government and return the excess amount collected from complainant.

ii. Restrain the respondent to charge fixed monthly charges for electricity and restrain respondent to charge common area electricity charges till respondent did not submit the actual consumption of electricity at common area and till respondent installed a temporary electricity meter from electricity distributor licensee (DHBVN) for their pending project activity.

iii. Direct the respondent to charge electricity charges in accordance with consumptions of units by complainant and restrain the respondent from charging fixed minimum charges on electricity meters.

iv. Direct the respondent to get the flat measurement done by independent architect and furnish report of actual size of flat to complainant and adjust the cost in accordance with actual size delivered to the complainant.

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

H. Directions of the authority

58. 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. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 14.06.2016 till 13.02.2019 i.e. expiry of 2 months from the date of offer of possession (13.12.2018). The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.

ii. Also, the amount of Rs. 3,08,799/- so paid by the respondent towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% 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.

iv. The respondent shall delete an amount of Rs.1,12,593/- from the total sale consideration.

v. The respondent is directed to return the amount of Rs.4,95,000/- so collected towards PLC "Centra Greens" as the unit has ceased to be preferentially located.

vi. The respondent cannot charge any HVAT from the allottees/ prospective buyers for the period 01.04.2014 to 30.06.2017 as the same was to be borne by the promoter-developer only. Therefore, the respondent shall not demand the same and the lien so marked be removed. Information about the same be also sent to the concerned bank by the promoter as well as complainant along with copy of this order.

vii. 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 complainant.

viii. The respondent shall not charge anything from the complainant 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.

59. Complaint stands disposed of.

60. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.02.2022