

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

Complaint no. : 1124 of 2020
First date of hearing : 09.07.2020
Date of decision : 20.08.2020

Palm Hills Apartment Owner Society
Regd. Office: R-501, Sispal Vihar,
Sector 49, Gurugram-122018.

Correspondence address: Flat no.202,
Tower 45, Palm Hills, Sector-77,
Gurugram-122004, Haryana.

Complainant

Versus

M/s Emaar MGF Land Ltd.
Regd. office: 306-308, Square One,
C-2, District Centre, Saket,
New Delhi-110017.

Also at: Emaar MGF Business Park,
2nd Floor, MG Road, Sikandarpur Chowk,
Sector-28, Gurugram-122002.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Manoj Yadav
Shri Rahul Sharma

Advocate for the complainant
Representative of the
complainant society

Shri J.K. Dang
Shri Pinakpani Mahanta and
Smt. Monika Balhara

Advocate for the respondent
AR of the respondent company

ORDER

1. The present complaint dated 18.03.2020 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 14(2) of the Act wherein it is inter alia prescribed that the promoter shall not make any alteration or addition in the sanctioned plans, etc. of the building or the common area within the project without the previous consent of at least 2/3 allottees who have agreed to take apartments in the building.
2. The particulars of the project, the details of the complainant, etc. have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	Palm Hills, Sector 77, Gurugram.
2.	Licensed area	29.346 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	a) 56 of 2009 dated 31.08.2009 Valid/renewed up to 30.08.2024 b) 62 of 2013 dated 05.08.2013 Valid/renewed up to 04.08.2019
5.	Dispute with respect to construction of 2 nd staircase	Tower 33- 57

6.	Occupation certificate in respect of 40 towers was granted on	05.03.2019 and 24.12.2019
7.	HRERA registered/ not registered	Registered Area of 45425.87 sq. mtrs. is registered vide no. 256 of 2017 dated 03.10.2017 which is valid upto 02.10.2022

3. The complainant submitted that the complainant is a registered voluntary consumer association formed with the objective of promoting and safeguarding the interests and welfare of the allottees of apartments in the said project. The officials and brokers of the respondent made various lucrative representations and also made a promise that the houses in the project will be delivered by November 2013. On the basis of these representation and the promises, the buyers including the aforesaid allottees applied for their respective houses/apartments vide applications made on various dates and paid application money. That after some further time lapse, the buyers were sent an apartment buyer's agreement (hereinafter referred to as the agreement) along with the payment schedule and were asked to sign and return the same. As per clause 11(a) of the buyer's agreement, the possession of the apartments was due by 33 months of the start of construction. The possession was due on 25.11.2013 for most buyers as the construction started on 25.02.2011. The respondent had miserably failed to comply with its contractual obligations of handing over possession of the respective

apartment to the buyers including the current complainant within the promised time. The respondent finally offered possession to them around November 2017 after more than 4 years of delay from the committed date of possession as per the clause 11(a) of the agreement.

4. That at the time of handing over possession, the respondent fraudulently concealed the fact that the respondent had failed to construct a staircase as required under the National Building Code. The respondent had also concealed the fact that the respondent had failed to construct a staircase and had been issued a conditional fire NOC. As per the conditions of the aforesaid NOC and the affidavit filed with the fire department, the respondent had to construct the additional staircase within 1 year of issue of NOC. That the buyers found out about this missing staircase and fire NOC conditions for their building when the respondent started constructing an exterior open staircase in the towers of some of the buyers in March 2019. The staircase being constructed by the respondent has various safety issues described as under:

- i. The design of the staircase being built by the respondent is spiral. That spiral staircases are extremely unsafe for high rise building.
- ii. The height of the railing of the open iron staircase is about 1 meter approximately. If a person is climbing down on the open staircase from the 9th floor which is at a considerable height, loses his balance slightly, or suffers vertigo or dizziness, he will easily fall down from the open

staircase and the railing of 1 meter at this height will not offer any protection to the person from falling down the staircase.

- iii. The staircase connects the balconies of various apartments which have only glass (UPVC) doors. It is pertinent to mention here that if the staircase was internal, the tower security guard could keep a vigil on who is entering the building and using the staircase. In this case as the staircase is in open area (exterior part of the building), the tower guards cannot monitor the same and it raises a security risk for the residents as anyone can use the staircase, break open the glass doors and enter their apartments.
5. The respondent failed to address any of the concerns of the buyers including the complainant regarding the safety of the staircase being built by the respondent and continued constructing the staircase. After continued protest by the residents, the construction of the staircase was temporarily stopped by the respondent. The respondent had barricaded/blocked the area earmarked for construction of the additional staircase on 01.03.2020 and has started digging/construction of the additional staircase thereafter. Despite repeated requests, the respondent has failed to address the concerns of the present buyers/allottees. The aforesaid act of the respondent is in violation of section 14(2) of the Act. This structural change of making an additional staircase cannot be done without seeking written consent of

2/3rd of the allottees. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to change the design of the additional staircase being constructed from spiral to rectangular in Phase 1 of Palm Hills group housing project, Sector 77 where the apartments of the allottees represented by the complainant association are situated.
 - ii. Direct the respondent to increase the height of the railing of the aforesaid staircase being constructed from 1 meter to 2 meters.
 - iii. If the respondent succeed in completing the spiral staircase during the pendency of complaint, the respondent may be directed by a decree of mandatory injunction to remove the spiral staircase and construct a rectangular staircase with a railing height of two meters in phase 1 of Palm Hills where the apartments of the allottees represented by the complainant association are situated.
6. The respondent has filed an application for rejection of complaint along with reply and contest the complaint on the following grounds.
- i. The respondent submitted that under the scheme of the Act, complaints under section 31 of the Act can only be filed with regard to non-compliance or violation of the provisions of the RERA Act, 2016. However, the provisions of the Act are not applicable to the said project in as much as the construction of the project already

stands completed. The members of complainant Association are all residents of units located in Towers 33 to 57 of the said project and the respondent has already made an application for issuance of the occupation certificate of Towers 33 to 57 before the competent authority on 22.11.2016. Since the said application has been made prior to notification of the Rules, the same is not an "ongoing project" as defined under the Rules and hence does not require registration. Since, the provisions of the Act and Rules are not applicable to the project in question, the present complaint is not maintainable in law and the same is liable to be dismissed. It is pertinent to mention herein that the occupation certificate has been issued in respect of Towers 33 to 57 of the project in question by the competent authority vide memo no ZP-567/SD(BS)/2017/24758 dated 03.10.2017.

- ii. The respondent submitted that section 31 of the Act contemplates filing of a complaint by "the association of allottees or any voluntary consumer association registered under any law for the time being in force". The section thus contemplates that there shall be a single association which shall be representative of the interests of all the allottees in the project. The allottees in the project have also agreed and undertaken to become members of the association of apartments to be formed by the respondent under the provisions of the Haryana Apartment Ownership Act, 1983, at the time of filing the

Deed of Declaration under the provisions of the said Act. Furthermore, clause 10 (k) of the buyer's agreement with respect to the said project specifically mentions that allottees in the project have also agreed and undertaken to become members of the association of apartments to be formed by the respondent.

- iii. That the respondent has already offered possession of the apartments to the the allottees purported to be represented by the complainant and had called upon them to make payment of balance sale consideration and complete the requisite formalities to enable the respondent to hand over possession. As a matter of fact, conveyance deeds have already been registered pertaining to all 23 units of the allottees purported to be represented by the complainant.
- iv. That the project of the respondent is an "ongoing project" under Act and the same has been registered vide memo no. HRERA-606/2017/1248 dated 03.10.2017. However, Towers 33-57 wherein units of the allottees purported to be represented by the complainant are located have not been registered as occupation certificate had been applied on 22.11.2016 and it was duly received on 03.10.2017.
- v. The respondent submitted that the said project has got delayed on account of the following reasons which were/are beyond the power and control of the respondent:

"Firstly, the building plans for the towers in question were approved by the competent authority under the then applicable National Building Code in terms of which buildings having height of 15 mtrs. or above but having area of less than 500 sq. mtrs. on each floor, were being approved by the competent authorities with a single staircase and construction was being carried out accordingly.

Subsequently, the National Building Code (NBC) was revised in the year 2016 and in terms of the same, all high rise buildings (i.e buildings having height of 15 mtrs and above) , irrespective of the area of each floor, are now required to have two stair cases...

The Fire Department is seeking to retrospectively apply the said provision and while processing the Fire NOC application has been insisting on two stair cases in all high rise buildings even in cases where the building plans stood approved with a provision for a single staircase and which have been constructed accordingly. The Fire Department has issued a provisional Fire NOC with the requirement that the second staircase would be constructed by the Developer within one year from the date of issuance of the provisional Fire NOC.

In view of the practical difficulties in constructing a second staircase in a building that already stands constructed according to duly approved plans, the Respondent made several representations to various Government Authorities requesting that the requirement of a second staircase in such cases be dispensed with. It was pointed out by the Respondent that construction of a second stair case would not be possible for several technical reasons such as obstruction of Fire tender path, violation of the setback norms, violation of fire safety norms in as much as the second staircase would not be connected to the common lobby area and that construction of second staircase by connecting balconies of the dwelling units would pose a security and privacy concern. The Respondent had also pointed out that the allottees of the dwelling units were also eagerly awaiting possession of their units since long and requested that the Fire NOC be issued without any preconditions...

Eventually, so as to not cause any further delay in the said project and so as to avoid jeopardising the safety of the

occupants of the buildings in question, the respondent had taken a decision to go ahead and construct the second staircase...

Secondly, the Respondent had engaged the services of Mitra Guha, a reputed contractor in real estate, to provide multi-level car parking in the project. The said contractor started raising certain false and frivolous issues with the Respondent due to which the contractor slowed down the progress of work at site. In spite of repeated reminders from the Respondent to the contractor to expedite work at the site, the contractor continued to work at a slow pace due to reasons best known to him and due to his lackadaisical performance, the construction of the project was slowed down and the whole project got delayed. The Respondent, in good faith, hired the services of the contractor believing him to be a reputed contractor in the real estate industry and any lack in performance from a reputed contractor cannot be attributed to the Respondent as the same was beyond its control. Thus, it is evident that the Respondent is committed towards fulfilment of its contractual obligations under the Buyer's Agreement and there is no default or lapse on the part of the Respondent."

- vi. The respondent submitted that the members of complainant Association have grossly misrepresented essential facts in the complaint. It is pertinent to mention that the members of complainant Association had created multiple obstructions in lieu of which the respondent was unable to start construction of 2nd staircase in Towers 33-57 of the project. The members of complainant Association have falsely alleged that an iron staircase has already been constructed in the towers wherein they reside. It is pertinent to mention that the 2nd staircase has been constructed in Towers 8-26 and 28-32 of the project and the residents therein have absolutely no issue with

the staircase. The members of complainant Association have misrepresented these facts and have very conveniently tried to hogwash this Hon'ble Authority into believing that the construction of 2nd staircase has been completed in towers 33-57, wherein units of the members of complainant Association are located.

vii. That the respondent had requested the Fire Services Department for provisional Fire NOC and in this regard had submitted an affidavit to the authorities stating to construct the 2nd staircase within a year's time from the date of provisional Fire NOC. On the basis of the same, provisional Fire NOC was granted on 02.08.2017. Subsequently, occupation certificate for towers 33-57 was granted by the Authorities on the basis of the provisional Fire NOC with the directions to construct a 2nd staircase. Accordingly, the respondent had appointed a contractor and begun construction work as well, however, the members of complainant Association have always hindered the respondents from carrying out any construction activities of the 2nd staircase in towers 33-57 of the project.

viii. The respondent submitted that the present application deserves to be dismissed at the very threshold.

7. The matter was taken up on 13.08.2020 in compliance of directions dated 21.07.2020 by Hon'ble Punjab and Haryana High Court in CWP No. 10296-2020. The hon'ble high court directed the authority to decide the application for interim

relief on 20.08.2020 in accordance with law. The complaint was heard on day to day basis.

8. During the proceeding dated 17.08.2020, the respondent was directed to file affidavit regarding the legality of spiral staircase and feasibility of rectangular staircase. The affidavit along with written arguments was filed by the respondent on 18.08.2020. The relevant paras of the affidavit read as under:

"I, Sandeep Sharma, duly authorized person of Emaar MGF Land Limited, having its Corporate Office Emaar Business Park, Mehrauli-Gurgaon Road, Sikandarpur Chowk, Sector-28, Gurugram 122002, do hereby solemnly affirm and declare as under:

1. That in consonance with National Building Code, 2016 and upon the insistence of Fire Department, second staircase to serve as fire exit is sought to be constructed by the respondent in Palm Hills Residential Group Housing Project situated in Sector 77, Gurugram for Towers 33 to 57 and other towers.
2. ...
3. That occupation certificate for as many as 40 Towers has also been issued by the Directorate, Town and Country Planning Department, Chandigarh since Spiral Staircases for these towers had been duly constructed and Fire NOC had been granted by the Fire Department.
4. That six meters fire corridor is required to be provided on the parameter of the Residential Group Housing Project so as to enable fire tenders to move in an unobstructed and unhindered manner during the course of a fire incident. Precaution has been observed during the course of construction of Spiral Staircases referred to above to ensure that the width of Fire Corridor (six meters) was duly maintained and not curtailed in any manner.
5. ...
6. ...
7. *In order to facilitate disembarking of people in the unlikely event of occurrence of a fire incident in the project, platform has been constructed at every three meters. This precaution has been observed while constructing all spiral staircases in the project.*
8. *That construction of Spiral Staircases to serve as second staircase in Towers 33 to 57 (24 Towers) has already*

commenced. Details pertaining to the commencement of construction of the Spiral Staircases for the aforesaid towers are under:-

<i>S.No.</i>	<i>Number of Towers</i>	<i>Start of construction date</i>
<i>1.</i>	<i>40, 41, 43, 44, 46 and 47</i>	<i>25.05.2020</i>
<i>2.</i>	<i>48, 49, 52, 53 and 54</i>	<i>15.06.2020</i>
<i>3.</i>	<i>35, 36, 37 and 57</i>	<i>15.06.2020</i>
<i>4.</i>	<i>55 and 56</i>	<i>14.07.2020</i>
<i>5.</i>	<i>38 and 39</i>	<i>14.07.2020</i>

- 9. That the residents of Towers 33, 34, 42, 45, 50 and 51 have needlessly adopted a rigid stance and have prevented the respondent from undertaking construction work of Spiral Staircase for these Towers. The respondent expects to complete the construction of all staircases latest by November 2020, provided the work is permitted to be carried on in an unobstructed manner.*
- 10. That there are 61 staircases in 65 Towers in Palm Hills Residential Group Housing Project. In compliance with National Building Code, 2016, second staircase for each individual tower was/is required to be provided. Site inspection and verifications had revealed that for 45 staircases out of 61 staircases, only Spiral Staircase could have been built as construction of rectangular staircase would have resulted in reduction of mandatory fire corridor/set back violation.*
- 11. That under these circumstances, the concerned officials after considering all relevant circumstances and in order to maintain uniformity in the project had recommended the construction of Spiral Staircase with provision of platform at every nine meters. The concerned high-ranking Government officials were all fully aware of the National Building Code, 2016. The said officials were fully aware that all towers in the aforesaid project had height exceeding nine meters. The said officials had cumulatively taken into reckoning statutory provisions as well as peculiar conditions prevailing at the spot and had then recommended construction of Spiral Staircase with provision of platform at every nine meters. The same is fully established from the Inspection Report prepared by the competent officials of Municipal Corporation, Gurugram, appended to this affidavit as Annexure 1. No violation of any nature has been committed by the respondent.*
- 12. ...*

13. *That every Spiral Staircase in the project require 1 meter of width for construction thereof. At the same time, in case a rectangular staircase is constructed in lieu of Spiral Staircase, width to the tune of 1.5 meter would be required. Therefore, the rectangular staircase, if constructed, would also diminish the light and ventilation to the duly constructed portion of the apartments at the spot."*

9. On 18.08.2020, the complainant sought adjournment for filing counter affidavit to the affidavit filed by the respondent and the same was filed on 19.08.2020. The relevant portion of the affidavit reads as under:

"2. That the contents of the corresponding para of the affidavit filed by the respondent are wrong and denied. That the staircase that the respondent in other towers mentioned by the respondent is extremely unsafe, unusable and has been constructed in a blatant violation of all laws of the land. The staircase clearly violates the relevant provisions of the National Building Code, the model building bye laws prescribed by the Ministry of Housing, and also Section 14 of RERA. That the fire NOC has been issued in clear violation of the aforesaid laws. It is submitted that the Fire Department has no competency to certify that a particular building/staircase is safe for residing or point out any structural deficiencies in the building/staircase is safe for residing, or point out any structural deficiencies in the building/staircase. The fire department can at most certify that firefighting equipment on site is in working condition and the number of staircases provided no matter however unsafe they maybe."

10. On 19.08.2020, the respondent was again directed to file an affidavit along with certain documents and the same was filed on 20.08.2020. The relevant paras of the affidavit read as under:

"I, Sandeep Sharma, duly authorized person of Emaar MGF Land Limited, having its Corporate Office Emaar Business Park, Mehrauli-Gurgaon Road, Sikandarpur Chowk, Sector-28, Gurugram 122002, do hereby solemnly affirm and declare as under:

1. ...
2. *That a table showing the status of second staircase to serve as fire exit, Fire NOC and Occupation Certificate for 65*

Towers located in Palm Hills Residential Group Housing Project situated in Sector 77, Gurugram have been mentioned in Annexure A.

- 3. That building plans dated 21.04.2011 of Palm Hills Residential Group Housing Project situated in Sector 77, Gurugram with single staircase as per norms at the relevant time had been duly sanctioned by Town & Country Planning Department. The copy of duly sanctioned building plans of Palm Hills Residential Group Housing Project has been appended to this affidavit as Annexure B.*
- 4. That for the purpose of obtaining Fire NOC for as many as 40 towers after construction of Spiral Staircases for these towers to serve as fire exit in compliance with National Building Code, 2016 the drawings indicating the construction raised at the spot including the Spiral Staircases, referred to above, had been duly submitted to the concerned Fire authorities. The aforesaid drawings indicating the construction raised at the spot including the of Spiral Staircases has been appended to this affidavit as Annexure C for 24 towers and Annexure D for 16 towers. As Built drawing indicating the construction raised at the spot including the Spiral Staircases had also been submitted to Directorate of Town and Country Planning, Haryana Chandigarh for the purpose of obtaining Occupation Certificates for these 40 towers. The as built Drawing has been appended as Annexure E for 16 towers and Annexure E1 for 24 towers. Thereafter, the Occupation certificate for 40 towers was issued. Copy of fire NOC is Annexure F and similar copy of occupation certificate for the 40 towers wherein construction was completed along with spiral staircases in Annexure G."*

11. 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.

Findings of the Authority

12. On consideration of the circumstances regarding requirement of 2nd staircase based on amendment in NBC in the year 2016, the documents and other record submitted by both the parties, the Authority has conducted summary procedure in the

complaint. As per code 4.6.2 of National Building Code, 2005 (prior to its third revisions in the year 2016), all buildings, 15 mtrs. in height or above and having area more than 500 sq. mtrs. on each floor, were required to have minimum two staircases. The relevant code 4.6.2 is reproduced below:

"4.6.2. All buildings, which are 15 m in height or above, and all buildings used as educational, assembly, institutional, industrial, storage, and hazardous occupancies and mixed occupancies with any of the aforesaid occupancies, having area more than 500 m² on each floor shall have a minimum of two staircases. They shall be of enclosed type; at least one of them shall be on external walls of buildings and shall open directly to the exterior, interior open space or to an open place of safety. Further, the provision or otherwise of alternative staircases shall be subject to the requirements of travel distance being complied with."

13. From the above, it is clear that all buildings having 15 mtrs. height or above and having area more than 500 sq. mtrs. on each floor were required to have minimum of two staircases. In other words, there was no mandatory requirement to construct second staircase where height of the building was 15 mtrs. and above but the area of each floor of the tower was less than 500 sq. mtrs. provided the building was not used for the purposes of educational, assembly, institutional, industrial, storage, and hazardous occupancies and mixed occupancies.
14. The building plans for the towers in question were approved with single staircase by the competent authority under the then applicable National Building Code in terms of which building having height of 15 mtrs. or above but having area of less than 500 sq. mtrs. on each floor. Accordingly, the

construction of towers was carried out by the promoter as per approved building plans.

15. Subsequently, the National Building Code (NBC) was revised in the year 2016 and as per amended provisions, all high-rise buildings (i.e. buildings having height of 15 mtrs. and above) irrespective of the area of each floor, are now required to have two staircases. It was notified vide Gazette published on 15.03.2017 that the provisions of NBC 2016 supersede the provisions of NBC 2005. The relevant provisions are as follows:

4.4.2.4.3 Staircases

4.4.2.4.3.1 General

The requirements of number of staircases shall supplement the requirement of different occupancies in 6.1 to 6.9.

All buildings, as mentioned in 1.2, shall have a minimum of two staircases. The actual number of staircases shall comply with the requirement of 4.4.2.1.

All exit staircases shall discharge, at the level of exit discharge, to the exit discharge, either,

- a) directly, or
- b) through an exit passageway, or
- c) through a large lobby.

At least 50 percent of the staircases shall discharge as per (a) and/or (b) above.

The minimum width of tread without nosing shall be 250 mm for staircase of residential buildings. This shall be minimum 300 mm for assembly, hotels, educational, institutional, business and other buildings. The treads shall be constructed and maintained in a manner to prevent slipping. The maximum height of riser shall be 190 mm for staircase of residential buildings(A-2) and 150 mm for other buildings. The number of risers shall be limited to 12 per flight. The staircases may be internal staircases or external staircases...

4.4.2.4.3.4 External staircases

The external staircases are the staircases provided on the external wall/facade, and shall comply with the following:

- a) External stairs shall always be kept in sound and usable condition.

- b) All external stairs shall be directly connected to the ground.
- c) Entrance to the external stairs shall be separate and remote from the internal staircase.
- d) Where an external staircase is provided, it shall be ensured that the use of it at the time of fire is not prejudiced by smoke and flame from openings (for example, windows, doors) in the external face of the building. Care shall be taken to ensure that no external wall or window opening opens on to or close to an external stair. If such openings exists within 3 m from an external staircase, they shall be protected with fire rated doors/window assemblies with rating of at least 60 min (see Fig. 10).
- e) The external stairs shall be constructed of noncombustible materials, and any doorway leading to it shall have minimum 120 min fire resistance.
- f) No external staircase shall be inclined at an angle greater than 45° from the horizontal.
- g) External stairs shall have straight flight not less than 1 500 mm wide.
- h) Handrails, to be provided on both sides, shall be of a height not less than 1 000 mm and not exceeding 1 200 mm.
- i) There shall be provisions of balusters with maximum gap of 150 mm.
- j) The use of spiral staircase shall be limited to low occupant load and to a building not exceeding 9 m in height. A spiral staircase shall be not less than 1 500 mm in diameter and shall be designed to give adequate headroom."

16. The respondent has submitted that in 65 towers in the said project there are 61 additional staircases (second staircases) were to be constructed. The respondent further submitted that out of 65 towers, in 40 towers spiral staircases have already been constructed and Fire NOC has been issued by the Fire Department and thereafter occupation certificate has also been granted by the competent authority on 05.03.2019 and on 24.12.2019. Remaining 21 second staircases in 25 towers are in the process of construction for which the present complaint has been filed by Palm Hills Apartment Owner

Society. Regarding provision of 2nd staircase in High rise buildings from Fire Safety point of view as per requirement of amended provisions in NBC, 2016, the Principal Secretary to Government of Haryana, Town and Country Planning Department, Chandigarh vide his office memo no. Misc-2310/AD(RA)/7/5/2019-2TCP dated 21.02.2019 has issued relaxation under clause no.13.2 of Haryana Building Code, 2017, for construction of such staircases in the setback area. The relevant portion of the relaxation is reproduced as under:

"2. Now, a representation in this regard was received in this Department and the same was considered at the level of the Government. In order to break the stalemate, it has been decided to grant relaxation under clause no. 13.2 of the Haryana Building Code, 2017 for construction of such staircase in the setback areas to the effect that:-

- i. Only cantilevered projection (1.8 metres), at a height well above the height of fire tender vehicle i.e. above 5 metres may be granted in the 6 metres wide set back around the building for Fire Safety measures.*
- ii. Construction of such staircases may be allowed with the condition that the applicant shall make use of mechanical light and ventilation for such buildings to offset the transgression of minimum set back distance as mandated in Clause 7.11 of the Haryana Building Code, 2017 for providing light and ventilation.*

17. As per above relaxation, there is no mention about the type of staircase, whether rectangular or spiral, is to be constructed by the promoter in the setback. However, in the present case, the promoter has constructed spiral staircase in 40 towers as mentioned above for which Fire NOC has been issued by the Director General, Fire Service, Haryana vide memo no. FS/2019/296 dated 12.12.2019 based on which DTCP, Haryana has also issued occupation certificated on 05.03.2019 and 24.12.2019 in respect of 40 towers considering the

submitted completion plans, after composition of violations done by the promoter from the original sanctioned building plan and after charging composition charges amounting to ₹69,26,482/- from the promoter. As such, all the constructions raised in violation of sanctioned building plans stands compounded and regularized by the competent authority in the present case at the time of issuance of occupation certificate for 40 towers where construction of spiral staircase has already been approved by the competent Authority.

18. ADFO, Fire Department, Gurugram was called on 14.08.2020 to clarify the facts regarding granting of Fire NOC considering the spiral staircases for which there is no provision in NBC, 2016 for the buildings more than 9 meters in height and he placed on record the proceedings dated 06.12.2018 of the meeting held in Nirman Bhawan on the subject under the Chairmanship of Secretary, Urban Development, Government of India along with the copy of noting portion dealing with issue of Fire NOC in this case. The relevant portion of the meeting held at Nirman Bhawan is reproduced as under:

“Subject: Meeting at Nirman Bhawan regarding single staircase issue.

As per the directions of W/DGFS, the undersigned attended the meeting on 06/12/2018 at 6 pm under the chairmanship of W/Secretary, Urban Development, at Nirman Bhawan, New Delhi Sh. A K Singh, PSTCP (Haryana), Sh. Davendra Nimbolkar, STP (HQ), Sh. Bhuvnesh Saini, STP (Gurugram) Mr. Sanjay Kumar, DTP (HQ) and Mr. R.S. Bhatt, DTP, Gurugram were also in the meeting. Dr. G C Misra, Director Delhi Fire Service also joined the meeting as a special invitee for his expert opinions. The matter was discussed in details and it was concluded that an Inspection of some buildings having single staircase is to be

carried out on 07/12/2018 and this meeting will be continue to 07/12/2018 at 6:30 pm. The same was informed to W/DGFS.

In this regard an Inspection of the some Project Sites to evaluate the feasibility of construction of second staircase in the already constructed Towers was carried out by a team lead by Dr GC Mishra, Director Fire Service, Govt. of Delhi, Mr. S.K Dua, Deputy Director (Tech)-1, Mr. Devendra Nimbokar, STP (HQ), Mr. Bhuvnesh Saini, STP (Gurugram), Mr. Sanjay Kumar, DTP(HQ) and Mr. R.S. Bhatt, DTP, Gurugram of Director, Town & Country Planning, Haryana on 07.12.2018.

Following various provisions of second staircase were suggested/recommended, as per site conditions.

- (i) Spiral Staircase with provision of platform at every 9 meter.*
- (ii) Connecting back to back towers by corridor with one additional Spiral Staircase.*
- (iii) Connecting row of Blocks by a 1.25 meter wide corridor at 2nd & above floors with one Staircase at the end.*
- (iv) It was also agreed by the committee members in the meeting to issue Fire NOC for towers up to less than 15 mtrs in height i.e. up to G + 3 floors (Low-rise).*

On dated 07/12/2018 at 6:30 pm again meeting was held under the chairmanship of W/Secretary, Urban Development, at Nirman Bhawan, New Delhi. Sh. A K Singh PSTCP (Haryana), Dr. G C Misra, Director Delhi Fire Service, Sh. S.K Dua, Deputy Director (Tech)- 1 Sh. Davendra Nimborkar, STP (HQ), Sh. Bhuvnesh Saini, STP (Gurugram) Mr. Sanjay Kumar, DTP(HQ) and Mr. R.S. Bhatt, DTP, Gurugram were also in the meeting. Various, provisions of second staircase suggested/recommended as per site conditions were discussed. W/Secretary was also agreed with the suggestions/recommendations mentioned above..."

19. The counsel for the respondent has put reliance on case titled as Vinay Narwal V/s JBB Infrastructure Pvt. Ltd. (HRERA) (Panchkula) bearing no. 1627 of 2019 wherein it has been held that the Authority does not have any power to take cognizance in respect of violation of provisions of the NBC. The counsel for the respondent has also put reliance on ILR2015(4)Kerala220 and ILR2017(4)Kerala236.

20. The contention of the complainant that the construction of the second staircase is in violation of the section 14 of the RERA Act, 2016 is not tenable as the respondent has constructed the said building as per the approved sanctioned plans and thereafter the provisional fire NOC was issued by the Fire Department on 02.08.2017 with the condition that the respondent has to construct the second staircase as per amended NBC, 2016 within a period of one year of the issuance of the said document. Moreover, the permission of second staircase in the already constructed towers based on duly approved building plan by the competent authority in accordance with the applicable NBC, 2005 has been done only to meet out the Fire Department requirement in view of amended NBC provisions. In this context, the Principal Secretary to Government of Haryana, Town and Country Planning Department, Chandigarh has also issued relaxation under clause 13.2 of Haryana Building Code, 2017 and also best possible solution in the matter was recommended in for construction of spiral staircase in the meeting held on 06.12.2018 and 07.12.2018 under the chairmanship of Secretary, Urban Development, Government of India. Therefore, the construction of the second staircase is a statutory obligation under the provisions of NBC as amended in the year 2016. So far as the contention that the RERA Act has overriding effect under section 89 is concerned, the Authority interpreting the provisions of section 88 is of considerate view that RERA Act and NBC are in consonance and complementary

to each other. They have to be read together and not in derogation with each other. Moreover, section 89 provides that the provisions of RERA Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. However, there is no inconsistency between the provisions of the RERA Act and NBC. Section 88 of the Act says that application of other laws is not barred. The provisions of RERA Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. The relevant provision is reproduced as under:

*"88. Application of other laws not barred-
The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force."*

21. After considering the circumstances, affidavits and counter affidavits filed by both the parties, recommendations of high-level committee in its meetings held on 06.12.2018 and 07.12.2018 under the chairmanship of Secretary, Urban Development, Government of India as well as relaxation under code no.13.2 of Haryana Building Code, 2017 issued by the Principal Secretary to Government of Haryana, Town and Country Planning Department, Chandigarh vide his office memo no. Misc-2310/AD(RA)/7/5/2019-2TCP dated 21.02.2019, the Authority of considered view that the construction of second staircase (spiral) in the existing building constructed by the promoter cannot be treated violation of section 14 of RERA Act, 2016 as the building was

constructed in accordance with sanctioned building plans by competent authority on 21.04.2011 and the Fire Scheme with the provision of single staircase in each tower based on the then provision under code 4.6.2 of NBC, 2005. Moreover, since the competent authority i.e. Director, Town and Country Planning, Haryana has already compounded all violations from sanctioned building plans concerning this project and after charging composition fees of ₹69,26,482/- has issued occupation certificated dated 05.03.2019 and 24.12.2019 in respect of 40 towers where spiral staircase has been constructed and Director General, Fire Services, Haryana has issued Fire NOC. The construction of second staircase in the form of spiral staircase cannot be treated violation of sanctioned building plan as it has been done as an additional staircase to meet out the requirement of subsequent amendment in NBC in the year 2016. Therefore, the objection regarding second staircase (spiral) raised by the Palm Hills Apartment Owner Society (complainant) is not tenable in view of Supreme Court ruling titled as Income-Tax Officer, Alleppey V/s M.C. Poonose and Ors. (AIR 1970 SC 385) and Lakshmana Rao Yadavalli & Anr. V/s State of A.P. & Ors. wherein it has been held that it is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in terms of the Act, or arises by necessary and distinct implication. It has also been held by Kerala High Court in the case titles as Desai Homes V/s The Divisional Officer, Fire and Rescue Service and Others. has

held that change of rules cannot be retrospective. The relevant para of the judgment is reproduced as under:

"11. On the above reasoning this court is of the opinion that there can be no insistence for provision of 10 meters width to the road access and the same would have to be considered on the basis of requirement as laid down in the building rules at the time of issuance of Exhibit P1 permit, i.e., as on 30.06.2008. the Divisional Officer of Fire and Rescue Service would have hence carry out a further inspection and if the other defects are rectified, would decide on the access based on the Building Rules as it existed at the time of issuance of Exhibit P1..."


22. Keeping in view the fact that the competent authority (Director Town & Country Planning) approved the building plans on 12.04.2011 as per the requirements of National Building Code, 2005 as applicable at that time and the promoter developed the project and constructed the building as per approved plans. Later on before obtaining occupation certificate the amended National Building Code, 2016 came into force. As per provisions of National Building Code, 2005 there was no requirement of second stair case in this project as has been explained above. But in the National Building Code 2016 additional stair case has been made mandatory for the buildings having heights more than 15 meters irrespective of the floor area. As the construction was more or less completed or at the advance stage when the National Building Code 2016 came into force and there was no possibility for provision of second stair case within the tower. Moreover, in view of

Supreme Court order in appeal titled as Income-Tax Officer, Alleppey V/s M.C. Poonoose and Ors. (AIR 1970 SC 385) and Lakshmana Rao Yadavalli & Anr. V/s State of A.P. & Ors. wherein it has been held that it is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in terms of the Act, or arises by necessary and distinct implication, the promoter is not under any obligation to provide second stair case as he has already constructed building as per the plans approved by the competent authority where single internal stair case was approved. Similarly as has been held by Kerala High Court in the case titles as Desai Homes V/s The Divisional Officer, Fire and Rescue Service and Others. that change of rules cannot be retrospective. But on the insistence of the fire department the promoter gave an undertaking to fire department to provide second stair case externally and also got occupation certificate from the Director Town & Country Planning for those towers where second spiral stair case (external) was provided. There is mandatory requirement to provide second stair case as per the National Building Code, 2016 but it would be unreasonable to expect from promoter who has already completed the building as per the provisions of National Building Code, 2005 which were


applicable at the time of approval of building plans by the DTCP and construction was completed as per approved building plans. The promoter to meet with the requirement of National Building Code, 2016 on the insistence of Fire Department to construct the second stair case that can only be provided externally as per the deliberations of the high level committee under the chairmanship of Secretary, urban development, Govt. Of India at New Delhi wherein following of Haryana Government and Delhi Government also participated. Sh. A.K. Singh, PSTCP (Haryana), Sh. Devender Nimbokar, STP(HQ), Sh. Bhuvnesh Saini, STP(Gurugram), Mr. Sanjay Kumar, DTP(HQ) and Mr. R.S. Bhatt, DTP (Gurugram), Dr. G.C. Mishra, Director Delhi Fire Service, S.K. Dua, Deputy Director Technical. The proceeding of the above high level committee was also got approved from the Hon'ble minister of Housing and Urban Affairs, Government of India. Since all such issues regarding feasibility and safety issues and adherence to the National Building Code to the best has already been considered by the said high level committee. To adopt best alternative where second internal stair case is also necessary and where rectangular stair case is also not feasible on account of non-availability of clear setback for movement of fire tender, Spiral stair case (externally) was allowed and same

was approved by the DTCP while granting occupation certificate in such cases. If there are safety issues same may be raised with the DTCP. So the Authority is disposing the interim application as well as the complaint bearing no. CR/1124/2020 by issuing this order.

23. There is no merit in the contention of the complainant in the interim application as well as in the main complaint. Accordingly both are disposed of.
24. Complaint stands dismissed on merits.
25. File be consigned to registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.08.2020