

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

Complaint no. : 214 of 2020
Date of first hearing: 07.02.2020
Date of decision : 04.11.2020

1. Smt. Manju Varshney
2. Dr. Anil Kumar Varshney
Both R/o: H. No. 6, Kali Bari Apartment, Kali
Bari Marg, Gole Market, New Delhi-110001

Complainants

Versus

M/s Anant Raj Industries Limited
Registered Office:- CP-1, Sector 9, IMT
Manesar, Haryana-122051.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri. Gaurav Bhardwaj
Shri. Mitesh Charan

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 20.01.2020 has been filed by the complainants/allottees 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 allottees as per the apartment buyer's agreement executed inter se them.

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: -

1.	Name and location of the project	"Maceo", Sector-91, Gurugram
2.	Nature of the project	Group housing colony
3.	RERA registered/ not registered	Registered vide no. 63 of 2017 dated 18.08.2017 (Extension vide no. 09 of 2019 dated 25.11.2019)
4.	RERA registration valid up to	17.08.2019 (extension valid upto 17.08.2020)
5.	Project area	15.575 acres
6.	DTCP license no.	71 of 2008 dated 25.03.2008
	License valid/renewed upto	24.03.2020
	Name of licensee	Jubilant Software
7.	Date of apartment buyer's agreement	Not Executed
8.	Date of booking	13.02.2012 [page 22 of the reply]
9.	Date of allotment letter	27.06.2012 [page 23 of the complaint]
10.	Date of new allotment letter	16.04.2013 [page 32 of the complaint]
11.	Apartment/unit no.	A-104, Tower A, 1 st Floor
12.	Unit measuring	1862 sq. ft.



		[as per SOA dated 02.12.2019 at page 26 of complaint]
13.	Payment plan	Construction linked payment plan
14.	Total consideration as per SOA dated 02.12.2019 at page 27 of complaint	Rs. 59,93,202/-
15.	Total amount paid by the complainant as per SOA dated 02.12.2019 at page 28 of complaint	Rs. 54,75,572/-
16.	Due date of delivery of possession as per clause 25 of the allotment letter dated 13.02.2012- i.e. 36 months + 180 days grace period from the date of commencement of construction i.e. 29.05.2014	29.11.2017 Note: the date of commencement of construction has been taken from the requisite documents filed by the respondent at the time of registration
17.	Occupation Certificate	28.11.2019 [as per annexure R-6, Page-123 of Reply]
18.	Offer of Possession	30.11.2019 [as per annexure P-5, Page-34 of complaint]

3. The details provided above have been checked on the basis of the records available in the case file which have been provided by the complainant and the respondent. Due to non-execution of BBA between both the parties, the date/period of delivery of possession cannot be determined, however, as per allotment letter dated 13.02.2012 (annexed as annexure R-1, at page 21 to 61), wherein a clause 25, states that the schedule for possession of the said unit, shall be handed over within 36



months from the date of commencement of construction alongwith 180 days of extension (grace period). The clause 25 is reproduced herein below:

"Subject to clause 21 herein or nay other circumstances not anticipated and beyond the control of the company and nay restraints/restrictions from nay court/authority and subject to the applicants(s) having complied with all the terms and conditions of the present application for provisional allotment and the applicant(s) not being in default of payment including but not limited to timely payment of the total consideration and stamp duty and other charges and having complied with all provisions, formalities, documentations etc. including the standard apartment buyer's agreement and the sale deed the company proposes to handover the possession of the said apartment(s) to the applicant(s) within a period of 36 months from the date of commencement of construction. The applicant(s) agrees and understands that the company shall be entitled to an extension of 180 days, after the expiry of 36 months....."

Hence, the due date of possession is being calculated as per clause 25 of the allotment letter dated 13.02.2012. Further, both the parties, have also failed to submit on record the start date of commencement of construction. As the project is registered under RERA [Registered vide no. 63 of 2017 dated 18.08.2017& (Extension vide no. 09 of 2019 dated 25.11.2019)], the respondent at the time of application for registration had submitted requisite documents, wherein the date of commencement of construction was provided as 29.05.2014. Thus, the due date for delivery of possession having calculated from the commencement of construction i.e.



29.05.2014 read with clause 25 of the allotment letter/booking form, comes out to be 29.11.2017.

4. The complainants submitted that vide allotment letter dated 27.06.2012, the allotted apartment was A-103, 1st Floor, Tower-A admeasuring 2146 sq. ft. in the said project. The complainants time and again also requested the respondent to execute the apartment buyer's agreement but the respondent did not respond.
5. The complainants further submitted that the complainants objected to the act of the respondent of not executing the BBA. Further, owing to personal reasons, the complainants requested the respondent to allot a different unit having lesser area from the current allotted unit. Accordingly, upon their request, the respondent allotted a new unit bearing no. A-104 admeasuring 1708 sq. ft. in the same project to the complainants.
6. The complainants submitted that after a delay of almost 7 years, the complainant got a ray of hope when the respondent vide letter dated 30.11.2019 sent an "offer of possession letter" for the said unit bearing no. A-104 on 1st Floor, Tower-A in the said project. It is pertinent to be noted that there has been a considerably delay in completion of the project and despite offer of possession, the respondent is not willing to let



the complainants see their unit in order to finally take possession. Hence, this complaint for the aforementioned relief:

- i. Direct the respondent to handover the possession of the apartment along with prescribed interest per annum from the promised date of delivery of the apartment in question.
7. 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 to plead guilty or not to plead guilty.
8. The respondent contests the complaint inter alia on the grounds mentioned herein:
- i. That the respondent demanded the payment as per the construction based payment plan as opted by the complainant in terms of application dated 13.02.2012. It is the respondent who had requested to the complainant to come forward to execute & sign builder buyer agreement. When the complainant did not come forward to sign the builder buyer agreement, the respondent sent a copy of the apartment buyer agreement to the complainant via courier on 17.07.2014 to be signed but the same has not been signed and sent back to the

respondent till date. This shows the ulterior motive of the complainant that he never wanted to enter into a legally binding agreement. Further, the complainant is bound by the terms and conditions of the application signed by the complainant para 25 of the application dated 13.02.2012 which reads as under:

"25. Subject to the clause 21 herein or any other circumstances not anticipated and beyond the control of the Company and any restraints/ restrictions from any court/authority and subject to the Applicant(s) having complied with all the terms and conditions of the present application for provisional allotment and the Applicant(s) not being in default of payment including but not limited to timely payment of the total sale consideration and stamp duty and other charges and having complied with all provisions, formalities, documentations etc. including the standard Apartment Buyer's Agreement and the sale deed the Company proposes to handover the possession of the said Apartment(s) to the Applicant(s) within a period of 36 months from the date of construction. The Applicant(s) agrees and understand that the Company shall be entitled to an extension of 180 (One Hundred And Eighty) days, after the expiry of 36 months....."

- II. That the project "Maceo" had to undergo unforeseen and adverse circumstances causing the work progress of the project being hampered and delayed because of which the possession of the flat/ apartment could not be handed over within the stipulated period. It is pertinent to mention that the progress of the project was affected due to circumstances which were beyond the control of the



respondent and the same is covered under the force majeure clause 19 of the buyer agreement.

III. The delays were caused on account orders passed by the Hon'ble National Green Tribunal and the State Pollution Control Board which issued various directions to builders to take additional precautions and steps to curtail pollution. On account of the aforementioned reasons the progress of the work of the respondent was abruptly hampered. It is further submitted that all these events led to suspension and stoppage of works on several occasions which also resulted in laborers and contractors abandoning work. As a result of various directions from the authorities at different occasions, regarding water shortage and pollution control etc., coupled with laborers and contractors abandoning the works; the respondent had to run from pillar to post in order to find new contractors and laborers, thus affecting the progress of the project.

IV. The respondent recently intimated complainant that despite respondent facing several hindrances which were beyond the control of respondent, the project has been completed and the occupancy certificate for Tower "A" has been received on 28.11.2019. The unit of the

complainant is complete and possession has been offered by way of possession cum demand letter dated 30.11.2019 to the complainant.

- V. That respondent had time and again requested to the complainant to come forward and executed apartment buyer agreement. When the complainant failed to sign the apartment buyer agreement then the respondent had sent builder buyer agreement to the complainant, to sign the agreement and deliver the agreement to the company; which the complainant did not sign and deliver till date to the respondent. The copy of the apartment buyer agreement had been sent to the complainant via courier on 17.07.2014 to be signed but the same has not been signed and sent back to the respondent till date. Further, any demand raised by the company is as per the construction link plan opted by the complainant at the time of booking.
9. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
10. The Authority on the basis of information and explanation and other submissions made and the documents filed by both the



parties is of considered view that there is no need of further hearing in the complaint.

Arguments have been heard.

11. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in **Simmi Sikka v/s M/s EMAAR MGF Land Ltd.** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
12. On consideration of the circumstances, the evidence, other record and submissions made by both the complainant and respondent and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act.
13. During the hearing, the counsel for the complainant submitted that the no BBA has been executed between the parties and hence the date/period of delivery of possession cannot be determined. The authority after determining the facts and submissions of both the parties conclude that by virtue of clause 25 of the allotment letter/booking form dated 13.02.2012 which states that the due date of handing over of possession will be calculated 36 months from the date of

commencement of construction plus 180 days extension (grace period) and basis the requisite documents submitted by the respondent at the time of registration, wherein the date of commencement of construction has provided as 29.05.2014, the due date for delivery of possession will be calculated from the commencement of construction date as 29.05.2014. Thus, the due date for delivery of possession comes out to be 29.11.2017. The respondent has offered possession of the subject unit to the complainant on 30.11.2019.

14. 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 complainant is entitled to delayed possession charges from the due date of possession at prescribed rate of interest i.e. @ 9.30% p.a. w.e.f. 29.11.2017 till offer of possession i.e. 30.11.2019 as per section 18(1) of the Act read with rule 15 of Rules.
15. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:
 - 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. 29.11.2017 till the offer of possession i.e. 30.11.2019.



- ii. The complainant is directed to take over the possession of the allotted unit within a period of 30 days by making balance dues, if any.
 - iii. Interest on the due payments from the complainant shall be charged at the prescribed rate @ 9.30% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
 - iv. The respondent shall not charge anything from the complainant which is not part of the apartment buyer's agreement.
 - v. Holding charges shall be made effective from the two months of offer of possession i.e. (30.11.2019 + 2months =31.01.2020). The respondent is entitled to charge holding charges after 31.01.2020.
15. Complaint stands disposed off
16. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:04.11.2020

(Subhash Chander Kush)

Member

JUDGEMENT UPLOADED ON 04.12.2020