

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

Complaint no. : 486 of 2020
Date of first hearing: 26.03.2020
Date of decision : 04.11.2020

Ashok Sehrawat

R/o: Mohalla Heliwala, Village Sukhrali,
Behind OBC Bank, Sector-17A Market,
Gurugram, Haryana-122001

Complainant

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. Hardeep
Shri. Mitesh Charan

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 13.02.2020 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 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	23.07.2012
8.	Apartment/unit no.	1103, 11 th Floor, Tower- F
9.	Unit measuring	2146 sq. ft.
10.	Payment plan	Construction linked payment plan
11.	Total consideration as per annexure C3 SOA dated 15.01.2020 at page 79 & 80 of complaint	Rs. 74,60,846/-
12.	Total amount paid by the complainant as per SOA dated	Rs. 78,77,673/-



	15.01.2020 at page 81 of complaint	
13.	Due date of delivery of possession as per clause 7.1 of the said agreement- i.e. 36 months + 180 days grace period from the date of execution of agreement i.e. 23.07.2012	23.01.2016

3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondent. An apartment buyer's agreement dated 23.07.2012 is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered by 23.01.2016. However, the respondent has failed to fulfil its contractual obligation by neither delivering the possession within stipulated period nor paying the compensation as per terms of agreement dated 23.07.2012.
4. The complainant submitted that on 16.01.2020, the complainant sent an e-mail to the respondent to handover the possession as soon as possible. However, as per the agreement the respondent have to deliver the possession of the said unit till January 2016. The respondent neither gave a justifiable reason for delay nor indicated a date for delivery of 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.
5. The authority issued notice of the complaint to the respondent by speed post and also on given email address at maceo@anantrajlimited.com the delivery reports have been placed in the file. Despite service of notice, the respondent has preferred not to file the reply to the complaint within the stipulated period. However, the respondent appeared on the date fixed for hearing i.e. 04.11.2020.
6. 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.
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.
8. 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 heard.

9. 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.
10. 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. By virtue of clause 7.1 of the apartment buyer's agreement executed between the parties on 23.07.2012, possession of the booked unit was to be delivered within a period of 36 months with 180 days grace period from the date of execution of agreement. The grace period of 180 days is allowed to the respondent due to exigencies beyond the control of the respondent. Therefore, the due date of handing over possession comes out to be 23.01.2016. As such this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.

11. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the apartment buyer's agreement dated 23.07.2012 to hand over the possession within the stipulated period. 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. 23.01.2016 till offer of possession as per section 18(1) of the Act read with rule 15 of Rules.
12. 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. 23.01.2016 till the offer of possession.
 - ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of each subsequent month.

- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainant which is not part of the apartment buyer's agreement.
- v. 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.

15. Complaint stands disposed off

16. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:04.11.2020

JUDGEMENT UPLOADED ON 04.12.2020