

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

Complaint no. : 2856 of 2020
Date of first hearing: 04.11.2020
Date of decision : 04.11.2020

Sunil Chugh
R/o: S-403, Pan Oasis, Sector 70, Near Global
International School, Noida, Uttar Pradesh

Complainant

Versus

M/s Anant Raj Industries Limited
Registered Office:-H-65, Cannaught Circus,
New Delhi-110001.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri. Sushil Yadav
Shri. Mitesh Charan

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 06.10.2020 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	16.05.2012
8.	Apartment/unit no.	102, 1 st Floor, Tower- J
9.	Unit measuring	1195 sq. ft.
10.	Payment plan	Construction linked payment plan
11.	Total consideration as per SOA dated 27.06.2019 at page 43 of reply	Rs. 50,59,847.95/-
12.	Total amount paid by the complainant as per SOA dated 27.06.2019 at page 44 of reply	Rs. 40,19,820/-
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	16.11.2015



	execution of agreement i.e. 16.05.2012	
14.	Occupation Certificate	07.06.2019 [as per page-36 of reply]
15.	Offer of Possession	27.06.2019 [as per page-39 of reply]

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 16.05.2012 is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered by 16.11.2015 but the respondent offered possession on 27.06.2019. 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 16.05.2012.
4. The complainant submitted that the construction of the block in which the complainant flat was booked with a promise by the respondent to deliver the flat by 16.11.2015 but was not completed within time for the reasons best known to the respondent. Further, as per the apartment buyer's agreement, the respondent has allotted 1195 sq. ft. area to the complainant but at the time of giving possession the respondent is charging for the size of 1310 sq. ft. The ground

situation is entirely opposite and on possession letter dated 27.06.2019 it was found that loading is around 40% and the actual carpet size is only 794 sq. ft. only. Moreover the complainant need to pay for the super area for which he do not have nay ownership rights. This act by the respondent clearly shown that ulterior motive of the respondent was to extract money from the innocent people fraudulently. 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. 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.
 6. The respondent contests the complaint inter alia on the grounds mentioned below which according to him were beyond his control:
 - I. That the project "Maceo" had to undergo unforeseen and adverse circumstances causing the work progress of the project "Maceo" 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.

- II. 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.

- III. The respondent recently intimated complainant that despite respondent facing several hindrances which were

beyond the control of respondent, the project is completed and the occupancy certificate for Tower "J" has been received on 07.06.2019. The unit of the complainant is completed and possession has been offered by way of possession cum demand letter dated 27.06.2019 to the complainant and the same has been intimated about the same to the complainant.

- IV. That as per clause 10.4 of the apartment buyer agreement, it was agreed that only if the increase in super area is of more than 10%, the respondent would be required to intimate the complainant/allottee. In the present case, the increase in super area from 1195 sq. ft. to 1310 sq. ft. was permissible and as per which revised rate was charged. The complainant has already been intimated about the same and accordingly, the instant complaint is not maintainable.
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 16.05.2012, 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 16.11.2015. The respondent has offered possession of the subject unit to the complainant on

27.06.2019. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the apartment buyer's agreement dated 16.05.2012 to hand over the possession within the stipulated period.

11. During the hearing, the complainant submitted that the super area has been increased by more than 5%. However, as per provisions of RERA Act builder can charge only upto 5% (+/-) of the area. Accordingly, the authority restricted the builder/respondent to charge only 5% of the increase area.
12. 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. 16.11.2015 till offer of possession i.e. 27.06.2019 as per section 18(1) of the Act read with rule 15 of Rules.
13. 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. 16.11.2015 till the offer of possession i.e. 27.06.2019.

- ii. The complainant is directed to take over the possession of the allotted unit within a period of 30 days by making the requisite payments to the respondent, 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. (27.06.2019 + 2months =27.08.2019). The respondent is entitled to charge holding charges after 27.08.2019.

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