

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

Complaint no. : 6670 of  
2019  
Date of first hearing: 07.02.2020  
Date of decision : 04.11.2020

Mr. Jaideep Singh Rathore  
R/o: A-202, A-Wing, Laksh Chand Apartment,  
Gokuldham, Goregaon East, Mumbai-400063

**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. Sanjeev Dhingra  
Shri. Mitesh Charan

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 26.12.2019 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<br>(Extension vide no. 09 of 2019 dated 25.11.2019) |
| 4.  | RERA registration valid up to   | 17.08.2019<br>(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   | 27.04.2012  |
| 8.  | Apartment/unit no.  | 301, 3 <sup>rd</sup> Floor, Tower- L  |
| 9.  | Unit measuring  | 1195 sq. ft.  |
| 10. | Payment plan  | Construction linked payment plan  |
| 11. | Total consideration as payment plan at page 30 of complaint (Total Consideration Rs.47,70,400 + Rs. 10,30,050 Additional Charges) | Rs. 58,00,450/-   |



|     |  |  |
|-----|--|--|
| 12. | Total amount paid by the complainant (as alleged by the complainant in complaint) & as per demand letter cum service notice dated 04.11.2018 at page 51 of complaint       | Rs. 38,73,986/-  |
| 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. 27.04.2012 | 27.10.2015   |
| 14. | Occupation Certificate   | 28.11.2019<br>[as per annexure R-7, Page-110 of Reply] |
| 15. | Offer of Possession  | 30.11.2019<br>[as per annexure R-2, Page-34 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 27.04.2012 is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered by 27.10.2015 but the respondent offered possession on 30.11.2019. 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 27.04.2012.



4. The complainant submitted that on 04.06.2012, the allotted flat was transferred by Mr. Nitin Arora to the complainant (Mr. Jaideep Singh Rathore). The transfer was also acknowledged and agreed by the respondent. With this, the complainant stepped into the shoes of an original buyer. According to the complainant, the complainant ought to have received the physical possession of the unit within 36 months from the date of execution of apartment buyer's agreement with an extended period of 180 days but the respondent failed to do so till October, 2015.
5. Further, the complainant submitted that the respondent issued possession letter on 30.11.2019 but again the respondent cheated with the complainant because the respondent charged on 1310 sq. ft. instead of 1195 sq. ft. 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.
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. The respondent contests the complaint inter alia on the grounds mentioned below which according to him were beyond his control:

I. That as per the apartment buyer agreement, the respondent had proposed to handover possession of the flat/unit within 36 months plus 180 days in total from the date of execution of the agreement *subject to any delay due to force majeure*. 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 "L" has been received on 28.11.2019. The unit of the complainant is completed and possession has been offered by way of possession cum demand letter dated 30.11.2019 to the complainant. The complainant has already been intimated about the same and accordingly, the instant complaint is not maintainable.
8. 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.

9. 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.

10. 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.
11. 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 27.04.2012, 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 27.10.2015. The respondent has offered possession of the subject unit to the complainant on 30.11.2019. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the apartment buyer's agreement dated 27.04.2012 to hand over the possession within the stipulated period.

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. 27.10.2015 till offer of possession i.e. 30.11.2019 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. 27.10.2015 till the offer of possession i.e. 30.11.2019.



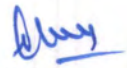
- ii. The complainant is directed to take over the possession of the allotted unit within a period of 30 days by making the requisite payments to the respondent, if any.
  - iii. Interest on the due payments from the complainant shall be charged at the prescribed rate @ 9.30% by the promoter which is 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. (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