

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

Complaint no. : 6801 of 2019  
Date of first hearing: 07.02.2020  
Date of decision : 04.11.2020

1. Brig. Ramnandan Prasad Singh (Retd.)
2. Mrs. Usha Singh
3. Vikram Singh  
All R/o: H. No. 9, Sector-23, East Pocket,  
Gurgaon, Haryana-122017

**Complainants**

Versus

- 1.M/s Anant Raj Industries Limited  
Registered Office:- CP-1, Sector 9, IMT  
Manesar, Haryana-122051.
- 2.M/s Jubilant Software Services Ltd,  
Office at: H-65, Connaught Place, New Delhi,  
Central Delhi-110001
- 3.Director, Town & Country Planning  
Department, Haryana  
Office at: Nagar Yojna Bhawan, Plot No. 3,  
Block-A, Sector-18A, Madhya Marg,  
Chandigarh-160018

**Respondents**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri. Nitopal Shyam  
Shri. Mitesh Charan

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 08.01.2020 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) Valid upto 17.08.2020
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	03.08.2012
8.	Apartment/unit no.	502, 5 <sup>th</sup> Floor, Tower- F
9.	Unit measuring	2146 sq. ft.



10.	Payment plan	Construction Linked Plan (as per payment plan annexed at page 65 of complaint)
11.	Total consideration as payment plan at page 65 & 66 of complaint (Total consideration Rs. 69,45,410 + Rs. 14,83,840 Additional Charges)	Rs. 84,29,250/-
12.	Total amount paid by the complainant as per demand letter cum service notice dated 07.02.2019	Rs. 64,64,624/- (as per page 69 of complaint)  Rs. 68,29,133/- (as alleged by the complainant in 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. 03.08.2012	03.02.2016
14.	Occupation Certificate	28.11.2019 [as per annexure R-4, Page-98 of Reply]
15.	Offer of Possession	30.11.2019 [as per annexure 5, Page-74 of complaint]

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 03.08.2012 is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered by 03.02.2016 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 03.08.2012.

4. The complainants submitted that the complainants have paid 90% of the amount of the sale consideration towards the cost of the impugned unit no. F-0502 of Tower F in the complex including costs towards other facilities. The respondent company deliberately maintained silence and never bothered to abreast the complainants of the latest development of the project and nay rhymes and reason for such a gross and inordinate delay.
5. Further, the complainants submitted that the respondent issued possession cum demand letter on 30.11.2019. Later on 23.12.2019 & 24.12.2019, the complainants visited the site and shocked to see that the condition of the said unit is not at all in habitable condition despite having occupation certificate from the competent authority. 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 respondents 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 "F" has been received on 28.11.2019 and the process of offering possession will be initiated in near future.
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 respondents and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondents are 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 03.08.2012, 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 03.02.2016. The respondents have offered possession of the subject unit to the complainants

on 30.11.2019. Accordingly, it is the failure of the promoters to fulfil his obligations, responsibilities as per the apartment buyer's agreement dated 03.08.2012 to hand over the possession within the stipulated period.

12. During the proceedings, the counsel of the complainant has informed the authority that the complainant has not yet taken the possession of the flat and further requested to allow the complainant to visit the site. The authority directed the respondent to allow the complainant alongwith the representative of the builder to visit the site on 10.11.2020 to see the status of the unit and to satisfied the home buyer w.r.t. habitable condition of the flat/unit.
13. 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 respondents are established. As such complainants are 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. 03.02.2016 till offer of possession i.e. 30.11.2019 as per section 18(1) of the Act read with rule 15 of Rules.

14. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:

- i. The respondents are 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 complainants from due date of possession i.e. 03.02.2016 till the offer of possession i.e. 30.11.2019.
- ii. The complainants are directed to take over the possession of the allotted unit within a period of 30 days by making the requisite payments to the respondents, if any.
- iii. Interest on the due payments from the complainants shall be charged at the prescribed rate @ 9.30% by the promoters which is the same as is being granted to the complainants in case of delayed possession charges.
- iv. The respondents shall not charge anything from the complainants 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