

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Date of Decision: 08.12.2020

Appeal No.284 of 2020

Palm Hills Owner Apartments Society, Registered Office, Flat No.202, Tower 45, Palm Hills, Sector 77, Gurugram 122004

...Appellant

Versus

1. Emaar MGF Land Ltd., Corporate Office at Emaar MGF Business Park, 2nd Floor, Mehrauli Gurgaon Road, Sikandarpur Chowk, Sector-28, Gurgaon, 122002

2. Haryana Real Estate Regulatory Authority, New PWD Rest House, Civil Lines, Gurugram Haryana.

... Respondents

**Coram: Justice Darshan Singh (Retd), Chairman
Shri Inderjeet Mehta, Member (Judicial)
Shri Anil Kumar Gupta, Member (Technical)**

Argued by: Shri Manoj Yadav, Advocate, Ld. counsel for the Appellant.

Shri Randeep Singh Rai, Senior Advocate, with Shri Shekhar Verma, Advocate, Ld. counsel for the respondent/promoter.

ORDER

Shri Anil Kumar Gupta, Member (Technical)

The present appeal has been preferred by the appellant Palm Hills Apartments Owner Society under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called, 'the Act')

against the Order dated 28th August, 2020 passed by the Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called, 'the Authority') vide which the Complaint No.1124 of 2020 filed by the appellant/allottees was dismissed along with interim application by giving detailed reasons and with the observations that since all such issues regarding feasibility and safety and adherence to the National Building Code to the best has already been considered by the High Level Committee. To adopt best alternative where second internal staircase is also necessary and where rectangular staircase is not feasible on account of non-availability of clear setback for movement of fire tender, spiral staircase (externally), was allowed and the same was approved by the DTCP while granting occupation certificate in such cases. If, there are safety issues, same may be raised with the DTCP.

2. Aggrieved with the above order of the Ld. Authority, the appellant has filed the present appeal. The main prayer of the appellant is to direct the respondent/promoter to provide rectangular staircase as a second stair instead of the spiral iron staircase being provided by them as spiral staircase is unsafe.

3. The brief facts of the case are that there are in all 65 towers in the project being developed by respondent/promoter. The appellants, who are members of the Registered Voluntary Consumer Association with the name and style "Palm Hills Apartments Owner Society", are the allottees of their respective houses/apartments in various towers from Towers No.33 to 57 in the Palm Hills, Sector 77, Gurugram being developed by the respondent/promoter. The dispute is with regard to construction of second spiral staircase being constructed by respondent/promoter for tower no.33 to 57.

4. The site plan of the towers i.e. Tower No.33 to 57 was sanctioned by the DTCP during 2011 & 2014. The construction of these

towers started on 25th February, 2011. As per the agreement between the parties, the possession of the apartments was due by 33 months of the start of the construction and thus, the possession was due on 25.11.2013 for most of the allottees. The occupation certificate for the Towers from 33 to 57 was applied by the respondent/promoter on 21st November, 2016. The provisional Fire NOC was issued by the Fire Department for the above said towers on 02.08.2017 with the condition that the respondent/promoter has to construct the second staircase as per amended National Building Code, 2016 within a period of one year of issuance of the said document. The occupation certificate of these 25 towers was issued by DTCP on 03.10.2017. The possession of the respective apartments to the allottees was offered by the respondent/promoter around November 2017. There is considerable delay in handing over the possession to the allottees by the respondent/promoter from the deem date of possession as per the agreement between the parties. The occupation certificate for 40 numbers other towers, which are not a subject matter in the present appeal was issued on 05.03.2019 and 24.12.2019 by the DTCP. The occupation certificate to the 40 numbers towers has been issued after construction of the spiral staircases as a second staircase.

The respondent/promoter before the Ld. Authority in the complaint had contended that the members of the complainant-Association are all residents of units located in Towers 33 to 57 of the project and respondent/promoter has already made an application for issuance of the occupation certificate of Towers 33 to 57 before the Competent Authority on 22.11.2016 and therefore, the said towers are not an “ongoing project” as defined under Rules and hence does not require registration and therefore, the Act and Rules are also not applicable. The occupation certificate in respect of Towers 33 to 57 has been issued by the

Competent Authority vide Memo No.2P-567/SD(BS)/2017/24758 dated 03.10.2017. The respondent/promoter has already offered possession of the apartments to the complainants-allottees and conveyance deeds have already been registered to all 23 units of the complainants-allottees. The respondent/promoter has given reasons for delay of the project which he has stated to be beyond its power and control. The respondent/promoter is constructing spiral staircase as a second stair as per the insistence of the Fire Department and as per the National Building Code, 2005 only one staircase was required to be built.

5. The appellants after filing the complaint, filed a CWP No.10296 of 2020 in the Hon'ble High Court of Punjab and Haryana for urgent hearing on the temporary injunction application filed by them before the Haryana Real Estate Regulatory Authority, Gurugram where the Haryana Real Estate Regulatory Authority, Gurugram was respondent No.2. The Hon'ble High Court vide order dated 21st July, 2020 issued the following direction, which reads as under:-

“This case has been taken up for hearing through video conferencing. Respondent no.2 is directed to decide the application for interim relief on 20.08.2020 in accordance with law. Disposed of.”

6. The Ld. Authority had taken up the matter on 13th August, 2020 in compliance to the aforementioned order dated 21st July, 2020 of the Hon'ble High Court of Punjab and Haryana. The Ld. Authority on 17th August, 2020 directed the respondent/promoter to file affidavit regarding legality of the spiral staircase. The affidavit was filed on 18th August, 2020.

The relevant paras of the affidavit read as under:-

“I, Sandeep Sharma, duly authorised person of Emaar MGF Land Limited, having its Cooperate Office Emaar Business Park, Mehrauli-Gurgaon Road, Sikandarpur Chowk, Sector 28, Gurugram

122002, do hereby solemnly affirm and declare as under:

1. That in consonance with National Building Code, 2016 and upon the insistence of Fire Department, second staircase to serve as fire exit is sought to be constructed by the respondent in Palm Hills Residential Group Housing Project situated in Sector 77, Gurugram for Towers 33 to 57 and other towers.
2. ...
3. That occupation certificate for as many as 40 Towers has also been issued by the Directorate, Town and Country Planning Department, Chandigarh since Spiral Staircases for these towers had been duly constructed and Fire NOC had been granted by the Fire Department.
4. That six meters fire corridor is required to be provided on the parameter of the residential group housing project so as to enable fire tenders to move in an unobstructed and unhindered manner during the course of a fire incident. Precaution has been observed during the course of construction of Spiral Staircases referred to above to ensure that the width of Fire Corridor (six meters) was duly maintained and not curtailed in any manner.
5. ...
6. ...
7. In order to facilitate disembarking of people in the unlikely event to occurrence of a fire incident in the project, platform has been constructed at every three meters. This precaution has been observed while constructing all spiral staircases in the project.
8. That construction of Spiral Staircases to serve as second staircase in Towers 33 to 57 (24 Towers) has already commenced. Details pertaining to the commencement of construction of the Spiral Staircases for the aforesaid towers are under:-

S.No.	Number of towers	Start of construct date
1.	40, 41, 43, 44, 46 and 47	25.05.2020
2.	48, 49, 52, 53 and 54	15.06.2020
3.	35, 36, 37 and 57	15.06.2020
4.	55 and 56	14.07.2020
5.	38 and 39	14.07.2020

9. *That the residents of Towers 33, 34, 42, 45, 50 and 51 have needlessly adopted a rigid stance and have prevented the respondent undertaking construction work of Spiral Staircase for these Towers. The respondent expects to complete the construction of all staircases latest by November, 2020, provided the work is permitted to be carried on in an unobstructed manner.*
10. *That there are 61 staircases in 65 Towers in Palm Hills Residential Group Housing Project, in compliance with National Building Code, 2016, second staircase for each individual tower was/is required to be provided. Site inspection and verifications had revealed that for 45 staircases out of 61 staircases, only spiral staircase could have been built as construction of rectangular staircase would have resulted in reduction of mandatory fire corridor/set back violation.*
11. *That under these circumstances, the concerned officials after considering all relevant circumstances and in order to maintain uniformity in the project had recommended the construction of Spiral Staircase with provision of platform at every nine meters. The concerned high-ranking Government officials were all fully aware of the National Building Code, 2016. The said officials were fully aware that all towers in the aforesaid project had height exceeding nine meters. The said official had cumulatively taken into reckoning statutory provisions as well as peculiar conditions prevailing at the spot and had then recommended construction of Spiral Staircase with provisions of platform at every nine meters. The same is fully established from the Inspection Report prepared by the competent officials of Municipal Corporation, Gurugram, appended to this affidavit as Annexure 1. No violation of any nature has been committed by the respondent.*
12. *That every Spiral Staircase in the project require 1 meter of width for construction thereof. At the same time, in case a rectangular staircase is constructed in lieu of Spiral Staircase, width to the tune of 1.5 meter would be required. Therefore, the rectangular staircase, if constructed, would also diminish the light and ventilation to the duly constructed portion of the apartments at the spot.”*

7. To controvert the above affidavit of the respondent/promoter, the appellant-complainant filed a counter-affidavit on 19th August, 2020

with the Ld. Authority. The relevant portion of the counter-affidavit reads as under:-

“2. That the contents of the corresponding para of the affidavit filed by the respondent are wrong and denied. That the staircase that the respondent in other towers mentioned by the respondent is extremely unsafe, unusable and has been constructed in a blatant violation of all laws of the land. The staircase clearly violated the relevant provisions of the National Building Code, the model building bye laws prescribed by the Ministry of Housing, and also Section 14 of RERA. That the fire NOC has been issued in clear violation of the aforesaid laws. It is submitted that the Fire Department has no competency to certify that a particular building/staircase is safe for residing or point out any structural deficiencies in the building/staircase. The fire department can at most certify that firefighting equipment on site is in working condition and the number of staircases provided no matter however unsafe they maybe.”

8. On the direction of the Ld. Authority, the respondent/promoter filed another affidavit on 20th August, 2020. The relevant paras of the affidavit read as under:-

“I, Sandeep Sharma, duly authorised person of Emaar MGF Land Limited, having its Cooperate Office Emaar Business Park, Mehrauli-Gurgaon Road, Sikandarpur Chowk, Sector 28, Gurugram 122002, do hereby solemnly affirm and declare as under:

1. ...
2. *That a table showing the status of second staircase to serve as fire exit, Fire NOC and Occupation Certificate for 65 Towers located in Palm Hills Residential Group Housing Project situated in Sector 77, Gurugram have been mentioned in Annexure A.*
3. *That building plans dated 21.04.2011 of Palm hills Residential Group Housing Project situated in Sector 77, Gurugram with single staircases as per norms at the relevant time had been duly sanctioned by Town and Country Planning Department. The copy of duly sanctioned building Plans of Palm Hills Residential Groups Housing Project has been appended to this affidavit as Annexure B.*

4. *That for the purpose of obtaining Fire NOC for as many as 40 towers after construction of Spiral Staircases for these towers to serve as fire exit in compliance with National Building Code, 2016 the drawings indicating the construction raised at the spot including the Spiral Staircases, referred to above, had been duly submitted to the concerned Fire Authorities. The aforesaid drawings indicating the construction raised at the spot including the of Spiral Staircases has been appended to this affidavit as Annexure C for 24 towers and Annexure D for 16 towers. As Built drawing indicating the construction raised at the spot including the Spiral Staircases had also been submitted to Directorate of Town and Country Planning, Haryana Chandigarh for the purpose of obtaining Occupation Certificates for these 40 towers. The as built Drawing has been appended as Annexure E for 16 towers and Annexure E1 for 24 towers. Thereafter, the Occupation Certificate for 40 towers was issued. Copy of fire NOC is Annexure F and similar copy of occupation certificate for the 40 towers wherein construction was completed along with spiral staircases in Annexure G.”*

9. ADFO, Fire Department, Gurugram was called by the Ld. Authority to clarify as to how fire NOC is being granted when there is no provision in National Building Code, 2016 for spiral staircase for buildings more than 9 metres in height. The ADFO, Fire Department on 14.08.2020 produced the proceedings of the meeting held in Nirman Bhawan under the Chairmanship of Secretary, Urban Development, Government of India and produced the noting portion dealing with issue of Fire NOC. The relevant part of the proceedings held at Nirman Bhawan is reproduced as below:-

“Subject: Meeting at Nirman Bhawan regarding single staircase issue.

As per the directions of W/DGFS, the undersigned attended the meeting on 06/12/2018 at 6 pm under the Chairmanship of W/Secretary, Urban

Development, at Nirman Bhawan, New Delhi Sh. A.K. Singh, PSTCP (Haryana). Sh. Davendra Nimbolkar, STP (HQ), Sh. Bhuvnesh Saini, STP (Gurugram), Mr. Sanjay Kumar, DTP (HQ) and Mr. R.S. Bhatt, DTP, Gurugram were also in the meeting. Dr. G.C. Misra, Director Delhi Fire Service also joined the meeting as a special invitee for his expert opinions. The matter was discussed in details and it was concluded that an inspection of some buildings having single staircase is to be carried out on 07/12/2018 and this meeting will be continue to 07/12/2018 at 06:30 pm. The same was informed to W/DGFS. In this regard an inspection of the some Project Sites to evaluate the feasibility of construction of second staircase in the already constructed Towers was carried out by a team lead by Dr. G.C. Mishra, Director Fire Service, Govt. of Delhi, Mr. S.K. Dua, Deputy Director (Tech.)-1. Mr. Devendra Nimbolkar, STP (HQ), Mr. Bhuvnesh Saini, STP (Gurugram), Mr. Sanjay Kumar, DTP (HQ) and Mr. R.S. Bhatt, DTP, Gurugram of Director, Town and Country Planning, Haryana on 07.12.2018.

Following various provisions of second staircase were suggested/recommended, as per site conditions

- (i) Spiral Staircase with provisions of platform at every 9 metres.
- (ii) Connecting back to back towers by corridor with one additional Spiral Staircase.
- (iii) Connecting row of Blocks by a 1.25 metre wide corridor at 2nd & above floors with one staircase at the end.
- (iv) It was also agreed by the committee members in the meeting to issue Fire NOC for towers up to less than 15 mtrs in height i.e. up to G+3 floors (Low-rise).

On dated 07/12/2018 at 06:30 pm again meeting was held under the Chairmanship of W/Secretary, Urban Development, at Nirman Bhawan, New Delhi. Sh. A.K. Singh, PSTCP (Haryana), Dr. G.C. Misra, Director Delhi Fire Service, Sh. S.K. Dua, Deputy Director (Tech.)-1, Sh. Davendra Nimbolkar, STP (HQ), Sh. Bhuvnesh Saini, STP (Gurugram), Mr. Sanjay Kumar, DTP (HQ) and Mr. R.S. Bhatt, DTP, Gurugram were also in the meeting. Various provisions

of second staircase suggested/recommended as per site conditions were discussed W/Secretary was also agreed with the suggestions/recommendations above...”

10. Ld. counsel for the appellant contended that the respondent/promoter was to construct two staircases even as per provisions of National Building Code, 2005. Whereas the respondent/promoter has provided only one rectangular staircase and the other staircase being provided by him is a spiral staircase which is unsafe for the use of residents of building having 7 to 9 floors height ranging from 31.95 metres to 38.15 metres. He further contended that as per Clause 4.4.2.4.3.1 of the National Building Code, 2016 two number staircases are mandatory for all buildings having height more than 15 metres. He further contended that as per Clause 4.4.2.4.3.1(j), the use of spiral staircase is to limit to low occupation and buildings not exceeding 9 metres in height. He further contended that the construction of spiral staircase as second staircase is unsafe and also is in violation of Section 14(2) of the Act as any addition or alteration in the sanctioned plans and layout plans cannot be made by the respondent/promoter without the previous consent of at least two third allottees.

11. Per contra, the Ld. counsel for the respondent/promoter contended that at the time, when the site plans of the towers under consideration were approved by the competent authority of DTCP during 2011 to 2014, the National Building Code, 2005 was applicable and according to provisions of National Building code, 2005 only one staircase was to be provided. Two staircases are to be provided in residential buildings only when the building height is more than 15 metres and the area at each floor is more than 500 m². He further contended that the area at each floor in the present case is less than 500 m². Therefore, only

one staircase is provided in the approved building plans and the construction of the building have been executed as per approved plan. The second staircase, which is spiral, is being provided to comply with the provisions of National Building Code, 2016. He further contended that National Building Code, 2016 has been made applicable vide notification dated 15th March, 2017; whereas, the OC for the towers was applied on 21st November, 2016 and issued on 03rd October, 2017. He contended that the towers stood constructed by the time the National Building Code, 2016 was made applicable on 15th March, 2017. Therefore, as per law, he is not under any obligation to construct the second staircase. He contended that the second staircase is being constructed on the insistence of Fire Department. He further contended that the respondent/promoter is not charging any amount from the allottees for the second staircase, though he is not obliged to do so.

12. The Ld. counsel for the respondent/promoter further contended that in 65 Towers of the project 61 additional staircases (second stair) were to be constructed. He further contended that out of the 65 towers, in 40 towers spiral staircases have already been constructed and Fire NOC has been issued by the Fire Department and thereafter the Occupation Certificate has also been granted by the competent authority on 05th March, 2019 and 24th December, 2019 considering the submitted plans after composition of violations done by the Respondent/ promoter from original sanctioned building plan and after charging composition charges amounting to ₹69,26,482/- from the respondent/ promoter. As such, he pleaded that all the constructions raised in violation of sanctioned building plans stands compounded and regularised by the competent Authority in the present case at the time of issuance of occupation certificate for 40 towers where construction of spiral staircase had already been approved by the Competent Authority. Remaining 21

second staircases in 25 towers are in the process of construction for which the present complaint has been filed by the Palm Hills Apartments Owner Society, is similar to the one which has been provided for the above said 40 towers with similar conditions and thus there is no violation in construction of spiral stair case as a second staircase. He contended that the spiral staircase is being provided on the insistence of Fire Department and there is no change in approved building plans and layout plans. So, there is no violation of Section 14(2) of the Act.

13. He further contended, regarding provision of second staircase in high rise buildings from Fire Safety point of view as per requirement of amended provisions in National Building Code, 2016, the Principal Secretary to the Government of Haryana, Town and Country Planning Department, Chandigarh vide his office Memo No.Misc.-2310/AD(RA)/7/5/2019-2TCP dated 21st February, 2019 has issued relaxation under Clause No.13.2 of Haryana Building Code, 2017, for construction of such staircase in the setback area. The relevant portion of the alleged relaxation is reproduced as under:-

“2. Now, a representation in this regard was received in this Department and the same was considered at the level of the Government. In order to break the stalemate, it has been decided to grant relaxation under Clause no.13.2 of the Haryana Building Code, 2017 for construction of such staircase in the setback areas to the effect that:

- i. Only cantilevered projection (I.B. metres). At a height well above the height of fire tender vehicle i.e. above 5 metres may be granted in the 6 metres wide setback around the building for Fire Safety measures.*
- ii. Construction of such staircase may be allowed with the condition that the applicant shall make use of mechanical light and ventilation for such buildings to offset the transgression of minimum set back distance as mandated in Clause 7.11 of the Haryana Building Code, 2017 for providing light and ventilation.*

14. It is observed that in the above said alleged relaxation, there is no mention about the type of staircases to be provided i.e. whether

rectangular or spiral is to be constructed by the Respondent/ promoter in the setback.

15. He contended that the complaint has been filed by only 23 allottees whereas there are in all 1530 allottees.

16. We have duly considered the pleas raised by Ld. counsel for the parties and have carefully gone through the relevant provisions of National Building Code, 2005 and National Building Code, 2016 regarding construction of staircase in high rise buildings and also the affidavit and counter-affidavit of the parties and the record brought before us. To properly appreciate the matter, it is important to bring out the relevant part of the National Building Code, 2005 which was applicable at the time of sanction of the site plans. The clause No.4.6.2 reads as under:-

“4.6.2. All buildings, which are 15 m in height or above, and all buildings used as educational, assembly, institutional, industrial, storage, and hazardous occupancies and mixed occupancies with any of the aforesaid occupancies, having area more than 500 m² on each floor shall have a minimum of two staircases. They shall be of enclosed type: at least one of them shall be on external walls of buildings and shall open directly to the exterior, interior open space or to an open place of safety. Further, the provision or otherwise of alternative staircases shall be subject to the requirements of travel distance being complied with.”

17. The National Building Code, 2005 was revised by National Building Code, 2016. vide Gazette notification dated 15.03.2017, the provisions of National Building Code, 2005 were superseded with the amended National Building Code, 2016. The relevant provisions of National Building Code, 2016 are as follows:-

- “1.2** *The Provisions of this Part are applicable to,*
- a) *All high rise buildings; and*
 - b) *special buildings, those are,*
 - 1) *hotel, educational, institutional, business, mercantile, industrial, storage, hazardous and mixed occupancies, where any of these building have floor area more than 500 m² on any one or more floors;*
 - 2) *educational buildings having height 9 m and above;*

- 3) institutional buildings having height 9 m and above;
- 4) all assembly buildings;
- 5) buildings, having area more than 300 m² of incidental assembly occupancy on any floor; and
- 6) buildings with two basements or more or with one basement of area more than 500 m².

unless otherwise mentioned specifically in the provisions.

NOTE—The owner of the building and parties to agreement, may however, decide to applicant to provisions of this Part to buildings other than those given above.

2.25 High Rise Building—For the purpose of this part, all buildings 15 m or above in height shall be considered as high rise buildings.

4.4.2.4.3 Staircases

4.4.2.4.3.1 General

The requirement of number of staircases shall supplement the requirement of different occupancies in 6.1 to 6.9.

All buildings, as mentioned in 1.2 shall have a minimum of two staircases. The actual number of staircases shall comply with the requirement of 4.4.2.1.

All exit staircases shall discharge, at the level of exit discharge, to the exit discharge, either.

- a) directly, or
- b) through an exit passageway, or
- c) through a large lobby.

At least 50 percent of the staircases shall discharge as per (a) and/or (b) above.

The minimum width of tread without nosing shall be 250mm for staircase of residential buildings. The treads shall be constructed and maintained in a manner to prevent slipping. The maximum height of riser shall be 190 mm for staircase of residential buildings (A-2) and 150 mm for other buildings. The number of risers shall be limited to 12 per flight. The staircases may be internal staircases or external staircases...

4.4.2.4.3.4. External staircases

The external staircase are the staircases provided on the external wall/façade, and shall comply with the following:

- a) External stairs shall always be kept in sound and usable condition.
- b) All external stairs shall be directly connected to the ground.
- c) Entrance to the external stairs shall be separate and remote from the internal staircase.
- d) Where an external staircase is provided, it shall be ensured that the use of it at the time of fire is not prejudiced by smoke and flame from openings (for example, windows, doors) in the external face of the building. Care shall be taken to ensure that no external wall or window opening opens on to or

close to an external stair. If such openings exists within 3 m from an external staircase, they shall be protected with fire rates doors/window assemblies, with rating of at least 60 mm (see Fig.10).

- e) The external stairs shall be constructed of non-combustible materials, and any doorway leading to it shall have minimum 120 mm fire resistance.*
- f) No external staircase shall be inclined at an angle greater than 45° from the horizontal.*
- g) External stairs shall have straight flight not less than 1500 mm wide.*
- h) Handrails, to be provided on both sides shall be of a height not less than 1000 mm and not exceeding 1200 mm.*
- i) There shall be provisions of balusters with maximum gap of 150 mm.*
- j) The use of spiral staircase shall be limited to low occupant load and to a building not exceeding 9 m in height. A spiral staircase shall be not less than 1500 mm in diameter and shall be designed to give adequate headroom.”*

18. From the bare perusal of Clause 4.6.2 of National Building Code, 2005 it is clear that all buildings having 15 metres height or above and having area more than 500 m² on each floor were required to have minimum two staircases. Thus, if the building height is more than 15 metres, but the area at each floor is less than 500 m² on each floor, in that case, there is no stipulation in National Building Code, 2005 to provide minimum two staircases provided the building is not used for the purposes of educational, assembly, institutional, industrial, storage, and hazardous occupancies and mixed occupancies. The height of the building is between 31.95 metres to 38.15 metres i.e. more than 15 metres, but the area at each floor is less than 500 m² and the building is residential building. So, there is no merit in the argument for the Ld. counsel for the appellant that even as per National Building Code, 2005, the respondent/promoter was required to provide two staircases and therefore, his plea that as per National Building Code, 2005, the respondent/promoter was to provide two staircases deserves to be rejected.

19. As per National Building Code, 2016 which was made applicable w.e.f. 15.03.2017, there is a provision that all buildings of height more than 15 metres shall have minimum two staircases. Also as per clause 4.4.2.4.3.1 (j) of National building code, 2016, spiral staircase cannot be provided for building exceeding 9 meter in height. The site plans were approved in 2011 and 2014 for the towers where these allottees are residing. The respondent/ promoter proceeded with the construction of buildings/towers, as per the duly approved building plans. The buildings were completed or were near completion and the respondent/promoter applied for the grant of occupation certificate from the office of DTCP Haryana on 21st November, 2016. The respondent/promoter constructed the said building as per the approved sanctioned plans. In the meantime, the revised National Building Code, 2016 was made applicable w.e.f. 15.03.2017. The Fire Department issued provisional Fire NOC on 02.08.2017 with the condition that the respondent/promoter has to construct the second staircase as per amended National Building Code, 2016 within a period of one year of the issuance of the said documents. The respondent/promoter is constructing the staircase to comply with the above said stipulation in the Fire NOC.

20. It is important to bring out here the proceedings of the meeting dated 07.12.2018 High Level Committee and recommendations/ suggestions made by them as brought on record by ADFO on 14.08.2020 before the Ld. Authority during the proceedings of the complaint of the present case. As per the proceedings of the High Level Committee, the team lead by Dr. G.C. Mishra, Director, Fire Service along with the concerned officers/officials of Fire Department and Town and Country Planning Department were asked to visit some projects sites to evaluate the feasibility of the construction of the second staircase in already

constructed towers on 07.12.2018. The following suggestions/recommendations were made by them as per site condition.

- “(i) Spiral Staircase with provisions of platform at every 9 metres.*
- (ii) Connecting back to back towers by corridor with one additional Spiral Staircase*
- (iii) Connecting row of Blocks by a 1.25 metre wide corridor at 2nd & above floors with one staircase at the end.*
- (v) It was also agreed by the committee members in the meeting to issue Fire NOC for towers up to less than 15 mtrs ion height i.e. up to G+3 floors (Low-rise).”*

21. It is reported in the said proceedings that the above recommendations/suggestions were agreed by the Secretary, Urban Development Government of India. Therefore, the issues regarding feasibility of providing second staircase keeping in view the safety issues and compliance of safety norms in already constructed buildings stood considered by above said High Level Committee and recommendations/suggestions stood approved by the Hon’ble Minister of Housing and Urban Affairs Government of India to best comply with the requirement of National Building Code, 2016 where second internal staircase is not feasible. The provision of Spiral Staircase (external) as second staircase has been allowed keeping in view the setback requirement of movement of fire tenders in case of fire exigency. It is also noted that there are various suggestions/ recommendations with regard to the spiral staircases as per site condition i.e spiral staircase with provision of platform at every 9 metre, second connecting back to back towers by corridor with one additional spiral staircase. So, the High-Level Committee of which the abovesaid suggestions/recommendations have been recorded after taking the best view in the circumstances have recommended to provide the platform at every 9 metre, so as to comply with the above said condition of the National Building Code, 2016. However, the respondent/promoter is providing landing at every 3 metres. Therefore, all these issues regarding feasibility and safety and adherence

to National Building Code to the best has already been considered by the said High-Level Committee.

22. From the perusal of the affidavit submitted by the respondent/promoter on 18.08.2020, para 10, it is stated that on site inspection and verification it was revealed that only spiral staircase could have been built as construction of rectangular staircase would have resulted in reduction of mandatory fire corridor/setback violation.

23. The counter-affidavit submitted by the complainants on 19.08.2020, the above said assertions of the respondent/promoter 'that only spiral staircase could have been built as construction of rectangular staircase would have resulted in reduction of mandatory fire corridor/setback violation' has not been controverted by the appellants-complainants. Therefore, when the rectangular staircase is not feasible and, if constructed, would violate the fire safety norms therefore, the best alternative for providing the staircase with platform at every 9 metres has been considered by the Committee in the given circumstances to best comply with changed statute in the already constructed buildings and accordingly recorded their recommendations/ suggestions.

24. Moreover, the Director Town and Country Planning, Haryana has already compounded all violations from the sanctioned building plans after charging composition fee of Rs.69,26,482/- and has issued occupation certificate dated 05.03.2019 and 29.12.2019 in respect of 40 towers where spiral staircase has been constructed.

25. The respondent/promoter has already completed the construction of the building as per the approved plans when the National Building Code 2016 was made applicable. It will be unpracticable and unreasonable to ask them to provided second rectangular staircase to comply with the revised provisions of National Building Code, 2016. In the

similar case titled as *Desai Homes v. The Divisional Officer, Fire & Rescue Services* of Kerala High Court, it was directed to the Divisional Officer of Fire and Rescue Services to carry out an inspection and decide the case based on the building rules as it existed at the time of issuance of the permit.

The relevant para of the above said judgement reads as under:-

“11. On the above reasoning this court is of the opinion that there can be no insistence for provision of 10 meters width to the road access and the same would have to be considered on the basis of requirement as laid down in the building rules at the time of issuance of Exhibit P1 permit, i.e., as on 30.06.2008 the Divisional Officer of Fire and Rescue Service would have hence carry out a further inspection and if the other defects are rectified, would decide on the access based on the building rules as it existed at the time of issuance of Exhibit P1...”

26. The appellant has contended that the construction of second external spiral staircase is a change to means of ingress and egress from the building as envisaged under Section 14(2) of the Act and, therefore, the construction of spiral staircase cannot be done without the consent of 2/3rd allottees, therefore, the respondent/promoter is constructing the second spiral staircase in violation of Section 14(2) of the Act. Section 14(2) of the Act is reproduced as below:-

“14. Adherence to sanctioned plans and project specifications by the promoter.

(1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—

(i) any additions and alterations in the sanctioned plans layout plans and specifications and the nature

of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

Explanation.—*For the purpose of this clause, “minor additions or alterations” excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.*

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation.—*For the purpose of this clause, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.*

27. The respondent/promoter has constructed the buildings/towers as per the approved plans, which were sanctioned in the year 2011 and 2014 when the National Building Code, 2005 was applicable. The respondent/promoter on completion of the buildings applied for the occupation certificate for the towers No.33 to 57 on 21st November, 2016. In the meantime, the provisions of amended National Building Code, 2016 was made applicable w.e.f. 15.03.2017. The Fire Department while granting the provisional NOC on 02.08.2017 issued it with the condition that the respondent/promoter has to construct the

second staircase as per the amended National Building Code, 2016 within a period of one year of the issue of provisional NOC. The respondent/promoter is constructing staircase on the above said directions of the Fire Department, the appellant could not reply to any of our query as to how such a complaint can be filed under Section 14(2) of the Act when the respondent/ promoter is not constructing the staircase of its own, but constructing it on the directions of some authority under law. The construction of second spiral staircase by the respondent/promoter is not an addition or alteration of the approved sanctioned plans, but is being constructed on the insistence of the Fire Department to best comply with the revised provisions of National Building Code, 2016. Thus, there is no merit in the contention of the appellant that the construction of the second staircase is an addition and/ or alteration to the already sanctioned building plans and by not taking the consent of two third allottees the respondent/promoter is committing the violation of Section 14(2) of the Act.

28. Thus under the prevailing circumstances when the building stood already constructed and there is an amendment in the statute at such a belated stage and safety aspects have been considered by the high level committee of concerned department and agreed by Secretary, Urban Development GOI and spiral stair case is being constructed as per the such recommendations/ suggestion and all violations in similar towers of the same project stood compounded by the office of DTCP, Haryana, the construction of spiral stair case as a second stair case is the best alternate to best comply with amended NBC 2016. However, while considering the safety aspect as already ordered by the Ld. Authority, DTCP, Haryana may also consider to provide solid net caging around the spiral staircase as an additional safety against any accidental fall. This caging will also give

psychological confidence to the resident while climbing the spiral stair case.

29. There is no merit in the appeal filed by the appellant and is, therefore, dismissed with the above said observation.

30. Copy of this order be sent to the Ld. counsel for the parties/parties and Ld. Haryana Real Estate Regulatory Authority, Gurugram through e-mail.

31. The file be consigned to the records.

Justice Darshan Singh (Retd.)
Chairman
Haryana Real Estate Appellate Tribunal
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

08.12.2020
Manoj

Palm Hills Owner Apartments Society
Versus
Emaar MGF Land Ltd. and another
Appeal No.284 of 2020

Present: None.

Vide our separate detailed judgment of the even date, the appeal stands dismissed.

Copy of this judgment be communicated to both the parties/learned counsel for the parties and the learned Haryana Real Estate Regulatory Authority, Gurugram.

File be consigned to the records.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

08.12.2020
Manoj