

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

**Complaint no. : 1319 of 2018**  
**First date of hearing : 21.02.2019**  
**Date of decision : 25.04.2019**

Mrs. Anju Taneja  
Mr. Harish Chander Taneja  
Both R/o : 1239, Sector-15, Part II, Gurugram-  
122001 **Complainant**

Versus

M/s. JMD Ltd. (Through its directors)  
Office address: 6UGF, Devika Tower, Nehru  
Place, New Delhi-110019 **Respondent**

**CORAM:**

Shri Samir Kumar **Member**  
Shri Subhash Chander Kush **Member**

**APPEARANCE:**

Shri Harish Chander Taneja Complainant no. 2 in person  
Shri Sukhbir Yadav Advocate for complainants  
Shri Ajit Singh Thakur and Advocate for respondent  
Shri K.B. Thakur

**ORDER**

1. A complaint dated 23.10.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mrs. Anju Taneja and Mr. Harish Chander Taneja, against the promoter

M/s. JMD Ltd. on account of violation of clause 15 of the commercial premises buyer's agreement executed on 18.09.2010 in respect of apartment described below in the project 'JMD Suburbio', Sector 67, Gurugram for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, commercial premises buyer's agreement has been executed on 18.09.2010 i.e. prior to the commencement of the Act *ibid*, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint case are as under: -

|    |                                  |  |
|----|----------------------------------|--|
| 1. | Name and location of the project | "JMD Suburbio", Sector-67, Gurugram              |
| 2. | RERA Registered/ not registered. | <b>Registered( JMD Suburbio-II, 1.857 acres)</b> |
| 3. | Project area                     | <b>4.237 acres</b>                               |
| 4. | RERA Registration no.            | <b>312 of 2017 dated 17.10.2017</b>              |
| 5. | Revised completion date          | <b>31.12.2019</b>                                |
| 6. | Nature of the project            | Commercial complex                               |
| 7. | DTCP License no.                 | 291 dated 31.12.2007                             |

|     |   |                                  |
|-----|---|----------------------------------|
| 8.  | Shop/showroom/office no.  | CW-314, 3 <sup>rd</sup> floor    |
| 9.  | Shop area admeasuring   | 515.54 sq. ft. (approx.)         |
| 10. | Date of execution of commercial premises buyer's agreement-   | 18.09.2010                       |
| 11. | Payment plan  | Construction Linked Payment Plan |
| 12. | Basic sale price as per the agreement   | Rs. 24,78,062                    |
| 13. | Total amount paid by the complainant as per the statement of account dated 10.07.2018   | Rs. 26,04,312/-                  |
| 14. | Due date of delivery of possession as per <b>clause 15</b> of the agreement: 3 years from the execution of the agreement plus 6 months grace period | <b>18.03.2014</b>                |
| 15. | Delay in handing over possession till 25.04.2019  | 5 years 1 month 7 days           |
| 16. | Occupation certificate received   | 18.10.2018                       |
| 17. | Offer of possession   | 3.12.2018                        |

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A commercial premises buyer's agreement dated 18.09.2010 is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 18.03.2014. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The case came up for hearing on 21.02.2019 and 25.04.2019. The reply was filed by the respondent which has been perused.

**FACTS OF THE COMPLAINT:**

6. Briefly stating the facts of the complaint, the complainants submitted that they purchased a shop / office / unit no W-314 admeasuring a super area of 515.54 sq.ft at the rate of Rs. 4805.73/- per sq. ft. amounting total to Rs. 24,78,062/- on the assurance that construction would be completed in time and possession would be handed over in time. Accordingly, they paid booking amount of Rs. 3,41,030/- to the respondent.
7. It is submitted that the commercial premise buyer agreement dated 18.09.2010 was signed between both the parties i.e. M/s JMD Ltd. and the complainants on the terms and conditions as laid down by the company. As per the said agreement, the possession of the unit in question was to be handed over within 36 months from the date of the said agreement with a grace period of 6 months as provided under clause 15 of the

agreement. As per the said possession clause, possession was to be handed over lastly by September, 2013.

8. The complainants visited the respondent time and again for the possession of the unit in question which was already in delay moreover the complainants also demanded interest for the delayed period on which the respondent assured that the same will be adjusted at the time of possession. The delay in project is evident from the demand letter dated 07.12.2016 vide which the respondent made demand of Rs. 1,29,478/- and in which they stated that internal electrification work had commenced and which demand was duly paid by the complainants and receipt of which was issued by the respondent on 10.12.2016. The complainants already paid a sum of Rs. 26,04,312/- to the respondent.
9. The complainants submitted that almost five years have lapsed from the promised date of possession but the respondent has failed to handover the possession of the unit in question to the complainants and further the complainants repeatedly demanded the respondent to at least pay interest on delayed possession.

**ISSUES TO BE DECIDED:**

10. The complainants have raised the following issues:

- i. Whether the promoter is liable to get itself registered with this hon'ble authority under the RERA Act, 2016 in terms of section 3(1) first proviso of the Act which provides "Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act" i.e. three months from 1<sup>st</sup> May 2017 ?
- ii. Whether the respondent has caused exorbitant delay in handing over the possession of the units to the complainant and for which the respondent is liable to pay interest @ 18 % p.a. (i.e. at the same rate of interest which the Respondents use to charge on delay in payments by the allottees) to the complainants on amount received by the respondent from the complainants and which interest should be paid on the amount from the date when the respondent received the said amount?

- iii. Whether the respondent can sell super area in place of carpet area to the allottees, if no then whether the respondent is liable to return the extra money if charged from allottees on account of selling super area for monetary consideration?
- iv. Whether the respondent is liable to refund the monies so collected or charge on future payments the goods and service tax which came on statute and implemented from 1<sup>st</sup> of July 2017 as the said tax became payable only due to delay in handing over the possession by the respondent, as if the possession was given by the respondent on time then the question of GST would never have arose?
- v. Whether actions should be taken against the respondent for their failure of not obtaining insurances as prescribed under section 16 of the Act?

## **RELIEFS SOUGHT**

11. The complainants are seeking the following reliefs:

- i. Direct the respondent be ordered to make refund of the excess amount collected on account of any area in excess

of carpet area as the respondent has sold the super area to the complainants which also includes the common areas and which sale of common area is in total contradiction of the Act, for the reason as per the Act the monetary consideration can only be for the carpet area.

- ii. Direct the respondent to make payment of interest accrued on amount collected by the respondent from the complainants on account of delayed offer for possession and which interest should be @18% p.a. from the date as and when the amount was received by the respondent from the complainant.
- iii. Direct the respondent to refund (if collected from the complainants) not charge any amount of GST service tax etc, which had to be paid by the complainants only for the reason of delayed offer of possession, as, if the offer of possession was given on time, then no question of GST service tax would have arisen as on such date GST service tax was not in existence.



## **RESPONDENT'S REPLY**

12. The respondent submitted that the complainants at the time of signing of the agreement were well aware of the facts. The sanctioned building plans were also inspected and duly seen by the complainants at the time of the execution of said agreement, while the respondent company has been advised by its prestigious customers for change in building plans as the area under the project is surrounded by the large chunk of residential townships and is best fit for commercial mall. Therefore, considering the above proposal from almost every customers and consent in writing, the respondent company has made through its architect a proposed building plan and is duly shown with marking of each unit to each one of its customers and is also signed and acknowledged by its customers including the present complainant.
13. The respondent submitted that the promoter has developed the said project with the said proposed/revised building plans and has also received occupation certificate dated 18.10.2018 with the concerned authorities and also issued the letter regarding the offer of possession.

14. The respondent submitted that the complainants have failed to show any terms/conditions under which he can claim refund without cancellation or is entitled to interest. On the contrary as per clauses 6,7 of the said agreement, time is essence and in case of delay in payment the earnest money will stand forfeited.
15. The respondent submitted that under the said agreement complainants were bound to give balance outstanding and take delivery of the unit/shop after receipt of the occupation certificate in terms of clause 16 of the said agreement. The complainants breached fundamental terms of the said agreement. Neither in the complaint nor otherwise the complainants mentioned any term of the said agreement or any law under which he is entitled to refund/interest, which is purely a civil contract and the terms and conditions has to be followed in letter and spirit.
16. The respondent submitted that there is no allegation in the complaint nor any evidence filed by the complainants that the respondent company failed to abide by terms of agreement or

the progress of the construction was slow or there is any deficiency or defect on part of the respondent company.

17. The respondent further submitted that the complainants invested in the said property for investment purpose for making money and when the property prices went down, the complainants stepped back from the agreement, putting the respondent company at loss, because on the assurance of the complainant, the respondent company couldn't sell the unit to any other person.

18. The respondent submitted that the mentioned case is an abuse of process of law and is not maintainable at all in the eyes of law.

19. The complainants has concocted a false and baseless story and the present complaint has been filed with malafide intention, thus the present complaint is liable to be dismissed with costs.

20. The respondent submitted that the present complaint is beyond the scope of this hon'ble authority as the respondent company has already applied way back in 2016 before the commencement of HARERA and the same is barred by law. the

complainant has not disclosed anything as to how the present complaint is within the jurisdiction of the present authority. The complainant has not disclosed any date of the alleged cause of action from which the complainants got the right to sue before the authority.

### **DETERMINATION OF ISSUES**

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

21. In regards to the **first issue** raised by the complainants the authority is of the view that 1.857 acres out of the project area is already registered with the authority vide registration no. 312 of 2017. However, for remaining period, the respondent has not got registered the balance area with the authority. As such, authority takes suo moto cognizance and accordingly, registration branch is directed to take necessary action u/s 59 of the Act *ibid*.
22. With respect to the **second issue** raised by the complainants, as the promoter has violated the agreement by not giving the possession on the due date i.e 18.03.2014 as per the agreement, thus, the authority is of the view that the promoter

has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay to the complainant interest, at the prescribed rate of 10.70% p.a, for every month of delay from 18.03.2014 till 03.12.2018 till the handing over of possession.

23. With respect to the third issue raised by the complainants, as per the 2016 Act, the sale has to be executed on the basis of carpet area. However, the agreement in question was executed 18.09.2010, so the Act does not apply retrospectively.
24. With respect to **fourth issue** raised by the complainants, the complainant shall be at liberty to approach any other suitable forum regarding levy of GST.
25. Regarding the **fifth issue**, the complainants agreement executed on 18.09.2010, much prior to coming into force of this RERA Act. Thus, section 16 does not apply retrospectively.
26. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. The complainants requested that necessary directions be issued to the promoter

to comply with the provisions and fulfil obligation under section 37 of the Act.

**FINDINGS OF THE AUTHORITY:**

27. The respondent admitted the fact that the project JMD Suburhio is situated in sector-67, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complainant. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Arun Kumar Gupta, Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

28. **Jurisdiction of the authority-** 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 complainants at a later stage.

29. The counsel for the respondent has submitted that they had applied for occupation certificate in the year 2016 whereas

DTCP has granted OC on 18.10.2018, therefore, they are not supposed to pay delayed period charges to the complainants. However, the counsel for the complainants had submitted a copy of the OC no. 29796 dated 18.10.2018 wherein it has been specifically mentioned by DTCP that fire NOC has been submitted by them on 18.05.2018. in view of the above facts, the claim of the respondent that they had applied for OC in the year 2016, cannot be treated as valid because incomplete application for the issue of OC cannot be treated valid in the eyes of law. Therefore, the authority decided that the complainants are entitled for delayed possession charges i.e 18.03.2014 till 03.12.2018 at the prescribed rate of interest.

**DIRECTIONS OF THE AUTHORITY:**

30. After taking into consideration all the material facts adduced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions:

- (i) The respondent is directed to pay the complainants delayed possession charges i.e 18.03.2014 till 03.12.2018 at the prescribed rate of interest i.e 10.70% per annum as per the provisions of section

18 (1) of the Real Estate (Regulation & Development) Act, 2016.

- (ii) The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and the promoter shall not charge anything from the complainants which is not part of the agreement.
- (iii) The interest on the due payments from the complainants shall be charged at the prescribed rate of interest i.e 10.70% by the promoter which is same as being granted to the complainants in case of delayed possession.
- (iv) The arrears of interest so accrued so far shall be paid to the complainants within 90 days from the date of this order.

31. The complaint is disposed off accordingly.

32. The order is pronounced.

33. Case file be consigned to the registry.



34. Copy of this order be endorsed to the registration branch.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 25.04.2019

Judgement uploaded on 09.05.2019



HARERA  
GURUGRAM