

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

Complaint no. : 1314 of 2018

First date of hearing: 06.03.2019

Date of decision : 02.05.2019

Mrs. Saroj
H.no. 380/2, ward no. 7, Rasulpur road,
New extension, Palwal, Haryana
Mr. Ankit Chhabra
H.no. 495/12, Krishna colony,
Gurugram- 122001

Complainants

Versus

M/s JMD Ltd.
Registered office: 6 UGF, Devika tower,
Nehru place, New Delhi-110019

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Sanjeev Sharma Advocate for complainants
Shri Ajit Singh Thakur and Advocates for the respondent
K. B Thakur

ORDER

1. A complaint dated 30.10.2018 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. Saroj and Mr. Ankit Chhabra against the promoter, M/s JMD Ltd., on

account of violation of clause 15 of premises buyer's agreement dated 26.06.2012 in respect of apartment described below in the project "Imperial Suits" for not handing over possession by the due date which is in violation of the section 11(4)(a) of the Act *ibid*.

2. Since the premises buyer's agreement has been executed on 26.06.2012 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016. So penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligations on 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 are as under: -

- **Nature of the project: commercial complex**
- **DTCP license no: 291 dated 31.12.2007**
- **RERA registration: Not registered**

1.	Name and location of the project	"IMPERIAL SUITES", Sector-67, Gurugram, Haryana
2.	Payment plan	Construction linked plan

3.	Date of premises buyer's agreement	26.06.2012
4.	Unit no.	220,2 nd floor
5.	Area of unit	650 sq. ft.
6.	Occupation certificate dated	18.10.2018
7.	Basic sale price	Rs. 46,10,000/-
8.	Total consideration	Rs.48,01,863/-
9.	Total amount paid by the complainant	Rs 48,01,863/-
10.	Offer of possession	03.12.2018
11.	Date of sanction building plan	13.11.2013
12.	Due date of Possession as per clause 15 of the premises buyer agreement within period of 36 months from the date of sanction of revised building plan plus 6 months grace period i.e 13.11.2013	13.05.2017
13.	Delay in handing possession till date of offer of possession	1 year 6 months and 20 days
14.	Delay possession charges	Cannot be ascertained

4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondent. A premises buyer agreement dated 26.06.2012 is available on record for unit no. 220,2nd floor admeasuring 650 sq. ft. in the project 'IMPERIAL

SUITES' according to which the due date of possession comes out to be 13.05.2017. The respondent has failed to fulfil its contractual obligation till date which is in violation of section 11(4)(a) of the Act *ibid*.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 06.03.2019, 20.03.2019 and 02.05.2019. The respondent through its counsel appeared on 06.03.2019. The reply filed on behalf of the respondent has been perused by the authority.

FACTS OF THE CASE:

6. The complainants submitted that M/s Anand Dham Realtors Pvt. Ltd., a company registered under the Companies Act, 1956 having its registered office at 1101, Antriksh Bhawan, K.G. Marg, New Delhi were absolute owner and in possession of land bearing various Mustatils/Killas total admeasuring 33 k18 marlas (4.237 acres) situated in the revenue estate of village Badshahpur, Tehsil and District Gurgaon.

7. The complainants submitted that the above said M/s Anand Dham Realtors Pvt. Ltd entered into a development agreement dated 20.04.2007 with M/s Ansal Properties and Infrastructure Ltd. for development of commercial complex over the above described land, pursuant to which M/s Ansal Properties and Infrastructure Ltd. obtained licence no. 291 dated 31.12.2007 from Director Town and Country Planning, Haryana for development of commercial complex with sanctioned FSI of 3,22,986 sq. ft.
8. The complainants submitted that out of the aforesaid sanctioned FSI, an FSI of approximately 2,22,621 sq. ft. alongwith corresponding land i.e. front side of above described land was sold by the M/s Anand Dham and M/s Ansal Properties and Infrastructure Ltd. to the respondent herein vide agreement to sell dated 19.08.2010 over which the respondent came up with the a multi storeyed commercial complex to be known as "JMD Suburbio" and a service apartment to be known as "*Imperial Suite*", an integral part of the said complex herein after referred to as "the project".

9. The complainants submitted that Mrs. Manjusha Chopra and Mr. K.K. Chhabra purchased an individual unit no 220 admeasuring 650 sq. ft at the rate of Rs.7,092/- per sq. ft. amounting to Rs. 46,10,000/- on the assurance that construction shall be complete in time and possession would be handed over in time and the complainant paid a booking amount of Rs. 6,60,000/- vide cheque dated 07.04.2012.
10. The complainants submitted that the premises buyer's agreement dated 20.06.2012 was signed between both the parties i.e. M/s JMD Ltd. and Mrs. Manjusha Chopra and Mr. K.K. Chhabra on the terms and conditions as laid down by the company. The complainant submitted that it is pertinent to mention here that as per the premises buyer's agreement the possession of the unit in question was to be handed over within 36 months from the date of the sanctioned revised building plan with a grace period of 6 months as provided under clause 15 of the agreement. It is humbly submitted that the respondent had represented that the sanctioned plan would be received within the same year. Further as per the

possession clause the possession was to be handed lastly by June 2015.

11. The complainants submitted that as per the space buyer agreement the possession of the unit in question was to be handed lastly by June 2015. However at that time the construction of the project was far from completion.
12. The complainants submitted that in the meantime the above said unit was purchased by the complainants herein from the original allottees i.e. from Mrs. Manjusha Chopra and Mr. K.K. Chhabra and that endorsement to above extent was also made on the original buyer's agreement dated 26.06.2012.
13. The complainants submitted that they visited the respondent time and again for the possession of the unit in question. Moreover the complainants also demanded interest for the delayed period on which the respondent assured that the same shall be adjusted at the time of possession. The delay in project is evident from the demand letter vide which the respondent made demand of Rs. 2,33,578/- 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 24.12.2016. The complainants have already paid a sum of Rs. 48,01,863/- to the respondent.

14. The complainants submitted that almost three years having been passed from the promised date of possession the respondent till date 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. Demand was also made to CRM of the respondent on personal visit. However, the respondent has not even conceded to said demand. Hence the present complaint is being filed before this hon'ble authority.

ISSUES RAISED BY THE COMPLAINANTS:

15. **The following issues have been raised by the complainants:**
- i. Whether the promoter is liable to get itself registered with this hon'ble authority under the RERA Act, 2016?

- ii. Whether the respondent has caused exorbitant delay in handing over the possession of the units to the complainants and for which the respondent is liable to pay interest @ prescribed?
- 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 money so collected or charge on future payments the Goods and Service Tax as the said tax became payable only due to delay in handing over the possession by the respondent?

RELIEF SOUGHT BY THE COMPLAINANTS:

16. In view of the facts mentioned the following reliefs have been sought by the complainants:

1. The respondent be ordered to make refund of the excess amount collected on account of any area in excess of carpet area.

2. The respondent/promoter be ordered 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 complainants.
3. Direct the respondent to refund any amount of GST which had to be paid by the complainants only for the reason of delayed offer of possession.
4. Orders be passed against the respondent in terms of section 59 of the RERA Act, 2016 for the failure on part of the respondent to register itself with this hon'ble authority.

REPLY ON BEHALF OF THE RESPONDENT

17. The respondent submitted that the company - M/s. JMD Ltd. is one of India's most trusted real estate group. 'JMD Ltd.' is acclaimed real estate company in India and enjoys tremendous goodwill for its pioneering work in the real estate field. 'JMD Group' is a well established and reputed business corporate

house engaged in the businesses of development of residential and commercial complexes, malls/ shopping centers/ complexes, IT & SEZ & hospitality, in Delhi NCR and other parts of the country.

18. The respondent submitted that the complainants applied to the respondent company for the allotment of a service apartment to be known as "**Imperial Suite**" situated at village Badashapur, Sector – 67, Tehsil & District Gurgaon, Haryana. Thereafter, through 'commercial premises buyer's agreement' dated 26.06.2012, the complainant agreed to purchase a service apartment bearing no. 220, 2nd floor, (area 650 sq. ft. approx.) in said commercial complex at the rate of Rs.7092/- per sq. ft and accepted the terms and conditions of said agreement.

19. The respondent submitted that at the time of signing the said commercial premises buyer's agreement, the respondent company had clarified all the facts to the complainants and they were well aware of the facts that Anand Dham entered into a development agreement on 20.04.2007 with M/s. Ansal Properties & Infrastructure Ltd. (hereinafter referred to as the

“Ansal”) and Ansal obtained license no. 291 dated 31.12.2007 from Director of Town and Country Planning, Haryana. The complainants/ Mrs. Saroj and Anr. at the time of execution of the commercial premises buyer agreement was well aware of the fact that out of the aforesaid sanctioned FSI of 3,22,986 sq. ft., an FSI of approximately 2,22,618 sq. ft. along with corresponding land i.e. front side of the said land has been agreed to be sold by Anand Dham and Ansal to the respondent company i.e. JMD Ltd. It is also pertinent to mention herein that sanctioned building plans were also inspected and duly seen by the complainants at the time of 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, 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 and respondent company has applied for revision in building plans and developed the said project in accordance with the said proposed/revised building plans and got completed the project in time. Thereafter applied for the occupancy certificate with the concerned authorities. The respondent received the occupation certificate dated 18.10.2018 and the respondent is in the process of issuing the offer of possession letters to all the unit allottees.

20. The respondent submitted that the complainants opted for construction linked plan for the payment of installments against the said commercial unit and demands were raised in accordance with the said plan. It is pertinent to mention here that respondent company has requested to the concerned authorities for sanction of revised building plans and same has been done on 13.11.2013 valid for the period 12.11.2018. It has made all its efforts in order to complete the said project in terms of the said agreement instead of being a developer and has completed the construction of said commercial complex and applied for grant of occupation certificate on 15.06.2016

and same was received on 18.10.2018 from the concerned authority. The respondent company has already intimated to all its prestigious customers/ unit allottee(s) about the completion of said project and also about the application and grant of occupation certificate and assured after receipt of occupation certificate, possession of allotted units shall be handed over to all the allottee(s), which was pending due to the non-receipt of occupation certificate by the concerned authorities.

21. The complainants have failed to show any terms/condition under which they 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 shall stand forfeited. There is no term in the said agreement under which complainants can claim refund/interest. Under the said agreement complainants were bound to give balance outstanding and take delivery of unit/shop after receipt of occupation certificate in terms of clause 16 of said agreement. The complainants breached fundamental terms of the said agreement. Neither in the

complaint nor other wise the complainants showed/mentioned any term of said agreement or any law under which they are entitled to refund/interest, which was purely a civil contract and the terms and conditions has to be followed in letter & spirit. It is also pertinent to mention herein that the project was completed in June 2016 and accordingly application for grant of occupation certificate was made to the concerned authorities and the same has been received 18.10.2018, due to which HARERA is having no jurisdiction and applicability over the said project and no customer can take the undue advantage of said legislation. The respondent company has invested its own money & developed the said project/complex, the complainant is only entitled to make balance payment and take possession of said unit as per the said agreement.

22. There is no allegation in the complaint nor any evidence filed by complainants that the respondent company failed to abide by terms of agreement or the progress of construction was slow or there is any deficiency or defect on part of respondent company, whereas complainant's case is that they were unable

to make the balance payments in time as per payment plan and they have taken personal loan which they wanted to return to the loaner due to their needs. Admittedly the complainants have breached the agreement/abandoned the agreement, therefore not entitled to any relief/ refund/ interest/ compensation /damages etc. The complainants invested in the said property for investment purpose, for making money and when the property prices went down, the complainant stepped back from the agreement, putting the respondent company at loss, because on the assurance, the respondent company has developed said unit and could not sold to anyone else. The complainants are trying to gain out of his their wrong. It is submitted the said agreement is binding between the parties and the complainants have filed the above mentioned case only in order to wriggle out of their obligations under the said agreement.

23. The present complaint is beyond the scope of this hon'ble authority as the respondent company has already applied way back in 2016 before commencement of HARERA and the same is barred by law. The complainants have not disclosed

anything as to how the present complaint is within the jurisdiction of present authority. Thus, the complaint of the complainant is wholly non maintainable and is liable to be rejected on the above said ground. The complainants have not disclosed any date of the alleged cause of action from which the complainants got right to sue before this authority. Even according to the allegations of the complainant, the present complaint is not maintainable before this authority.

24. The complaint does not disclose a cause of action and further there is no merit in the same and hence liable to be dismissed. On a meaningful reading of the complaint, it is manifestly found to be vexatious and meritless in the sense of not disclosing a clear right to sue, therefore, is liable to be dismissed. The complaint discloses no material facts, giving rise to any cause of action against the respondent company, but only a trick to gain by way of illegal design, motive and plan and therefore the same is liable to be dismissed.

25. The complaint is baseless and is flagrant abuse of process of law. The complaint has been filed with the sole object to harass and blackmail the respondent company in order to gain by

illegal means. The respondent company submits that the complaint is wholly misconceived and untenable in law and is liable to be dismissed with heavy cost under section 35 A of the CPC.

DETERMINATION OF ISSUES

26. After considering the facts submitted by the complainants, respondent and perusal of record on file, the issue wise findings are as hereunder:
27. With respect to **first issue** raised by the complainants, the authority is of view that as the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent under the Act *ibid*. A copy of this order be endorsed to registration branch for further action in the matter.
28. With respect to **second issue** raised by the complainants the authority came across that as per clause 15 of the premises buyer's agreement the possession of the unit was to be given

within a period of 36 months from the date of sanction of revised building plan from the competent authority plus 6 months grace period. In present case due date of possession will be calculated from the date of building plan approvals i.e 13.11.2013. Therefore, the due date of possession comes out to be 13.05.2017 and the possession has been delayed by **1 years 06 months and 20 days** till the date of decision. Therefore, under section 18(1) proviso respondent is liable to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession. The authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.70% per annum on the amount deposited by the complainants with the promoter on the due date of possession i.e. **13.05.2017** upto the date of offer of possession i.e. 03.12.2018.

29. With respect to **third issue** raised by complainant, as per the RERA Act, 2016 the respondent should sell carpet area instead of super area. However, the agreement was executed on

26.06.2012 prior to coming into force of RERA Act, 2016. Thus, the act does not apply retrospectively.

30. With respect to **fourth issue** raised by complainants, hon'ble authority has no jurisdiction to pass an order in respect of service tax and GST and the special authority has already been constituted by the government to settle the dispute in respect of service tax and GST. Therefore, the complainants are directed to approached the concerned authority.

FINDINGS OF THE AUTHORITY:

31. The authority has complete jurisdiction to decide the complaint in regard to 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.
32. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. In the present case, the

project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

33. The complainants made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter.

34. The complainants requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions of the Act and to fulfil its obligations.

35. As per clause 15 of the premises buyer's agreement dated 26.6.2012 for unit no.220, 2nd floor, in project "Imperial Suites", Sector-67, Gurugram, possession was to be handed over to the complainants within a period of 36 months from the date of sanction of the building plan plus 6 months grace period which comes out to be **13.05.2017**. Complainants have already paid Rs.48,01,863/- to the respondent against a total sale consideration of Rs. 48,01,863/-.

36. Occupation certificate was received by the respondent on 18.10.2018 and after receipt of OC, they have offered the possession of the unit to the complainant on 3.12.2018. However, the complainants have denied to receive the offer of possession. Respondent is directed to serve the possession letter dasti to the complainant within a week. As such, complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.70% per annum w.e.f 13.05.2017 till the date of offer of possession i.e. 3.12.2018 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

DECISION AND DIRECTIONS OF THE AUTHORITY:

37. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following direction to the buyer in the interest of justice and fair play:

- i. The respondent is directed to pay interest at the prescribed rate of 10.70% per annum on the amount deposited by the complainants with the promoter on the due date of possession i.e. 13.05.2017 upto the date of offer of possession i.e. 03.12.2018
- ii. The arrears of interest so accrued shall be paid to the complainants within 90 days from the date of this order. Thereafter, the monthly payment of interest till handing over of the possession so accrued shall be paid before 10th of every subsequent month.
- iii. Complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The promoter shall not charge anything from the complainant which is not part of the BBA.
- v. As the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate

proceeding will be initiated against the respondent.

A copy of this order be endorsed to registration branch for further action in the matter.

38. The order is pronounced.

39. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.05.2019

Judgement uploaded on 28.05.2019

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