

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

**Note: Two BBA available, earlier one not signed by respondent,
second one signed by both. The second one is considered for
the present case.**

Complaint no. : 1401 of 2018
First date of hearing: 06.03.2019
Date of decision : 02.05.2019

Mr. Bipin Berry
R/o: 01/0001, Palm Terrace Select,
Golf Course Extension Road,
Next to Palm Drive, Sector 66, Gurugram,
Haryana-122001.

Complainant

Versus

M/s JMD Limited,
Office:3rd Floor, JMD Regent Square,
M.G. Road, DLF Phase 2, Sector 25,
Gurugram, Haryana-122001.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Ms. Priyanka Agarwal Advocate for the complainant
Shri. Ajit Singh Thakur and
K.B. Thakur Advocate for the respondent

ORDER

1. A complaint dated 25.10.2018 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 complainant Mr. Bipin Berry against the promoter M/s JMD Limited on account of violation of clause 15 of the commercial premises buyer's agreement executed on 09.08.2014 for unit no.424 in the project "Imperial Suite" for not giving possession by the due date which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.

2. Since, the commercial premises buyer's agreement has been executed on 09.08.2014 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, 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 statutory 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: -

- **Nature of project:** Commercial project
- **DTCP License No.:** 291 of 2007 dated 31.12.2007
- **RERA registered/ Not registered:** Unregistered

1.	Name and location of the project	Imperial Suite, Sector 67, Gurugram
2.	Nature of real estate project	Commercial project
3.	Total area of the project	4.237 acres
4.	RERA registered/ Not registered	Unregistered
5.	Office space/unit no.	424, 4 th floor
6.	Apartment measuring	650 sq. ft.
7.	Date of execution of commercial premises buyer's agreement	09.08.2014
8.	Payment plan	Construction linked
9.	Basic sale price as per agreement	Rs. 46,13,500/- (excluding other charges)
10.	Total amount paid by the complainant till date as per the complaint on 20.06.2015 to Commissioner of police	Rs. 42,72,599/-
11.	Date of delivery of possession as per clause 15: within 3 years plus grace period of 6 months from the date of execution of commercial premises buyer's agreement	09.02.2018
12.	Delay in handing over possession till date	1 year 2 months 23 days
13.	Occupation certificate	18.10.2018

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 is available on record for the aforesaid apartment according to which the possession of the same was

to be delivered by 09.02.2018. The respondent has not delivered the possession of the said unit as on date to the purchaser. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. Accordingly the parties appeared on 06.03.2019. The reply filed on behalf of the respondent has been perused.

FACTS OF THE COMPLAINT:

6. The complainant submitted that the complainant is a law abiding senior citizen and consumer who has been cheated by the malpractices adopted by the respondent being a developer and promoter of real estates since long time. Based on the advertisement, complainant showed interest in purchasing a service apartment in project JMD Imperial Suite, Sector 67, village Badshahpur, Gurugram, Haryana and being developed by M/s JMD Limited.
7. The complainant submitted that that based on promises and commitment made by the respondent, complainant booked a service apartment admeasuring 650 sq. ft, in the residential

project JMD Imperial Suite, Sector-67, village Badshahpur, Gurugram, unit no. 424, 4th floor. The initial booking amount of Rs. 4,41,350/- was paid through cheque dated 18.05.2012. That the respondent got more than 10 % amount of basic sale price and same day started the procedure of execution of buyer agreement. Accordingly the two copies of buyer agreement was signed and sent to builder for their signature.

8. The complainant submitted that during this period the complainant repeatedly requested respondent to sign and return copy of complainant but every time respondent gave excuses and never returned the copy of premises buyer agreement to complainant. After two years the builder sent a blank copy of the buyer agreement. The complainant was shocked and surprised beyond comprehension to find he was cheated by respondent. That the respondent had changed the date of execution of premises buyer agreement 09.08.2014 rather than 18.05.2012.
9. The complainant submitted that the respondent demanded more than 80 % of total amount before execution of fraudulent

second premises buyer agreement and complainant had paid all installment amounting to Rs. 37,94,143/- during period of first premises buyer's agreement dated 18.06.2012 to fraudulent second premises buyer's agreement dated 09.08.2014 in time bound manner.

10. The complainant submitted that the total cost of the said flat is Rs. 46,13,500/- as per premises buyer agreement. Out of this a sum of Rs. 37,94,143/- has been paid by complainant before execution of fraudulent second premises buyer agreement that is more than 80 % of total amount and again Rs. 4,78,456/- was paid by complainant as demanded by builder. That the complainant has paid sum of Rs. 42,72,599/- till 17.06.2015 which is more than 90 % of total cost of unit.
11. The complainant submitted that that the complainant adopted development link payment plan but the builder always sent illegal demand and as per premises buyer agreement builder was liable to give possession on dated 18.05.2015.
12. The complainant submitted that the complainant from time to time followed up with the respondent regarding the development of the project and later asked for refund. That the

complainant filed written complaint dated 20.07.2015 to DCP, Gurugram for the misconduct, cheating, cruelty, threaten, fraud against respondent. Due to all the above said reasons the complainant is now seeking a refund of the amount invested by him. Thus, the present complaint is filed.

ISSUES RAISED BY THE COMPLAINANT:

13. The following issue has been raised by the complainants:
- i. Whether or not the respondent is bound to refund the amount deposited by the complainants with interest?
 - ii. Whether or not the respondent has violated the terms and conditions of the agreement thereby delaying possession?
 - iii. Whether or not the respondent has fraudulently execute the second commercial premises buyer's agreement and collected 80% of total amount in time bound manner?

RELIEF SOUGHT BY THE COMPLAINANT:

14. The complainant is seeking the following reliefs:
- i. The respondent be directed to refund the amount of Rs. 42,72,599/- along with 18% interest.

- ii. Any other order that this hon'ble authority deem fit and proper to meet the ends of justice.

RESPONDENT'S REPLY:

15. The respondent submitted that the complainant applied for allotment of a named as Imperial Suite situated at village Badashapur, Sector-67, Tehsil & District Gurugram, Haryana. Thereafter, through commercial premises buyer agreement dated 09.08.2014. The complainant agreed to purchase the said premises bearing no. 424, fourth floor (area 650/- sq. ft. approx.) at the rate of Rs.7,098/- per sq. ft and accepted the terms and conditions of said agreement and after inspection of site and also after seeing all sanctions and approvals in this regard.

16. The respondent submitted that at the time of signing the said commercial premises buyer agreement the complainant was 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

complainant 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 complainant 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 the project completed in time and thereafter applied for the occupancy certificate with the concerned authorities. They received the occupation certificate dated 18.10.2018 and the respondent is in the process of issuing the offer of possession letter.

17. The respondent submitted that the complainant 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 and 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 dated 18.10.2018. The respondent company has already intimated to all its prestigious customers/ unit allottee 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, which is pending due to the non-receipt of occupation certificate by the concerned authorities. However at this time respondent has received the occupation certificate dated 18.10.2018 and totally ready to handover the possession of allotted units to its customers and investors. It is pertinent to mention here that the respondent company has been issuing offer of possession letter to its esteemed buyers in phased manner.

18. The respondent submitted that the complainant has failed to show any terms/condition 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 shall stand forfeited. There is no term in the said agreement under which complainant can claim refund/interest. Under the said agreement complainant was 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 complainant breached fundamental terms of the said agreement. Neither in the complaint nor otherwise the complainant showed/mentioned any term of said agreement or any law under which he is entitled to refund/interest, which was purely a civil contract and the terms and conditions has to be followed in letter & spirit.

19. The respondent submitted that 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 on dated 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.

20. The respondent submitted that there is no allegation in the complaint nor any evidence filed by complainant 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 he was unable to make the balance payments in time as per payment plan and he has taken personal loan which he wants to return to the Loaner due to his needs. Admittedly the complainant has breached the agreement/abandoned the agreement, therefore not entitled to any relief/refund/interest/compensation/damages etc. The complainant 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/booking of complainant, the respondent company has developed said unit and could not sold to anyone else. The complainant is trying to gain out of his own wrong. It is submitted the said agreement is binding between the parties and the complainant has filed the above mentioned case only in order to wriggle out of his obligations under the said agreement.

21. The respondent submitted that the above mentioned case is an abuse of process of law and is not maintainable at all in the eyes of law. The complainant has concocted a false and baseless story and the present complaint has been filed with mala-fide intention and to gain by way of its illegal design, motive and plan. The complainant has not come before the hon'ble authority with clean hands and has filed the above mentioned complaint suppressing and distorting material facts from the hon'ble authority and therefore, this present complaint is liable to be dismissed with cost.
22. 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 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 present authority/forum/court/tribunal. Thus, the complaint of the complainant is wholly non maintainable and is liable to be rejected on the above said ground. The complainant has not disclosed any date of the alleged cause of action from which

the complainant got right to sue before this authority. Even according to the allegations of the complainant, the present complaint is not maintainable before this authority.

23. The respondent submitted that 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.

24. The respondent submitted that 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:

25. 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:

- i. With respect to the **first issue** raised by the complainant, the authority is of the view that an occupation certificate has been received on 18.10.2018. Thus refund may not be allowed at this stage as granting the same will hamper the remaining work of the said project and also will affect the interest of other allottees who wish to continue with the project.
- ii. With respect to the **second issue** raised by the complainant, the authority came across that as per clause 15 of commercial premises buyer's agreement, the possession of the said apartment was to be handed over within 3 years plus grace period of 6 months from the date of execution of commercial premises buyer's agreement. The commercial premises buyer's agreement was executed on 09.08.2014. The grace period of 6 months has been given to the respondent due to exigencies beyond its control. Therefore, the due date of possession shall be

computed from 09.08.2014. The clause regarding the possession of the said unit is reproduced below:

“15: That the possession of the said premises is proposed to be delivered by the company to the unit allottee within three years from the date of execution of this agreement or further extended period of six months after the expiry of 36 months as agreed above except the force majeure circumstances.”

Accordingly, the due date of possession was 09.02.2018 and the possession has been delayed by one year two months twenty three days till the offer of possession. The complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.70% per annum w.e.f 09.02.2018 till the offer of possession as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

- iii. With respect to the **third issue** raised by the complainant, the authority came across that the complainant alleged in the complaint that the respondent has indulged in tricks and blatant illegality. But, there is no such documents or any evidence which states the deceitful nature of the respondent in matter of second commercial premises buyer's agreement. Thus, it will be affirm that the complainant has signed the second commercial premises

buyer's agreement in his all conscious state. Therefore, this issue is decided in negative.

FINDINGS OF THE AUTHORITY:

26. 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.

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

28. As per clause 15 of the commercial premises buyer's agreement dated 09.08.2014 for unit no. 424, 4th floor, in the project Imperial Suite, Sector 67, Gurugram, possession was to be handed over to the complainant by 09.02.2018. Complainant has already paid Rs. 42,72,599/- to the

respondent against a total sale consideration of Rs. 46,13,500/-.

29. Respondent has received occupation certificate dated 18.10.2018. However the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.70% per annum w.e.f 09.02.2018 till offer of possession as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

DECISION AND DIRECTIONS OF THE AUTHORITY:

30. 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 issues the following directions in the interest of justice and fair play:

- i. The respondent is directed to pay delayed possession charges to the complainant at prescribed rate of interest i.e. 10.70% per annum w.e.f. 09.02.2018 till offer of possession.
- ii. The respondent is directed to serve the possession letter dasti to the complainant within a week.

- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainant which is not the part of the commercial premise buyer's agreement and the respondent shall charge the interest on due payments from the complainant at the prescribed rate of interest i.e. 10.70% which is the same as is being granted to the complainant in case of delayed possession.
- v. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter on 10th of every month of delay till the handing over of possession.
31. The order is pronounced.
32. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 02.05.2019

Judgement uploaded on 28.05.2019