

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

**Complaint no. : 1320 of 2018**  
**First date of hearing : 06.03.2019**  
**Date of decision : 02.05.2019**

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

**Complainants**

**Versus**

1. M/s JMD Limited,  
**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 Advocates for the complainants  
Shri Ajit Singh Thakur and Shri K.B. Thakur Advocates 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 complainants Mrs Anju Taneja and Mr Harish Chander Taneja against the respondent

M/s JMD Limited on account of violation of clause 15 of the premises buyer's agreement executed on 26.06.2012 for unit no. 221 in the project "JMD Imperial Suites" 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 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, 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	Imperial Suite, Sector 67, Gurugram
2.	Occupation certificate received on	18.10.2018 ( Annx R-2)
3.	Nature of project	Commercial space and service apartment
4.	DTCP license no	291 of 2007 dated 31.12.2007
5.	RERA registration	<b>Not registered</b>
6.	Apartment/unit no.	221, 2 <sup>nd</sup> floor

7.	Apartment measuring	650 sq. ft.
8.	Date of execution of apartment buyer's agreement	26.06.2012
9.	Payment plan	Construction linked plan
10.	Total consideration as per statement of accounts dated 10.07.2018 page no 48 of the complaint ( Annx 2)	Rs. 47,50,583/-
11.	Total amount paid by the complainant as per statement of accounts dated 10.07.2018 page no 48 of the complaint ( Annx 2)	Rs. 47,50,583/-
12.	Date of delivery of possession as per clause 15: within 3 years plus grace period of 6 months from the date of sanction of revised building plan i.e 13.11.2013	<b>13.05.2017</b> <b>Note : (date of sanction of revised building plan i.e. 13.11.2013 as alleged by respondent in his reply)</b>
13.	Delay in handing over possession till date 02.05.2019	1 year 11 months 19 days

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. A 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 13.05.2017. 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 complainants submitted that M/s Anand Dham Realtors (P) 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 admeasuring 4.237 acres situated in the revenue estate of Village Badshahpur, Tehsil and Distt. Gurgaon.
7. The complainants also submitted that the above said M/s Anand Dham Realtors (P) 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. And 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 also submitted that out of the aforesaid sanctioned FSI, an FSI of approx. 2,22,621 sq. ft. along with 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 also submitted that they purchased unit no 221 admeasuring super area of 650 sq. ft at the rate of Rs. 7092/- per sq. ft. amounting total to Rs. 46,10,000/- on the assurance that construction shall be complete in time and possession would be handed over in time and paid booking amount of Rs. 6,60,000/- vide cheque dated 07.04.2012.
10. The complainants also submitted that the premise buyer agreement dated 20.06.2012 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. That it is must to mention here that as per the buyer 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 along 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 sanction plan would be received within the same year. As per the possession clause the possession was to be handed lastly by June 2015.

11. The complainants also submitted that all instalments paid as demanded by the company time and again.
12. The complainants also submitted that as per the premises buyer's 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.
13. The complainants also submitted that 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 shall be adjusted at the time of possession. That the delay in project is evident from the demand letter dated 09.12.2016 vide which the respondent made demand of Rs. 2,40,872.11/- 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 17.12.2016. That the complainants have already paid a sum of Rs. 47,50,582/- to the respondent.

14. The complainants also submitted that almost three years having been passed from the promised date of possession the respondent have till date failed to handover the possession of the unit in question to the complainants and further the complainants repeatedly demanded from the respondent to at least pay interest on delayed possession and the same demand/request was also made to CRM of the respondent on personal visit, however the respondent have not even conceded to said demand. Hence the present complaint is being filed before this authority.

**ISSUES RAISED BY THE COMPLAINANT:**

15. The following issue has been raised by the complainants:

- i. Whether the promoter is liable to get itself registered with this authority under the Act in terms of section 3(1) first proviso of the Act?
- ii. Whether the respondent is liable to refund the moneys 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?
- 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 actions should be taken against the respondent for their failure of not obtaining insurances as prescribed under section 16 of the act?
- v. Whether the respondent has caused exorbitant delay in handing over the possession of the unit to the complainants and for which the respondent is liable to pay interest @ 18 % per annum to the complainants on amount received by the respondent from the complainants?

**RELIEF SOUGHT BY THE COMPLAINANT:**

16. The complainants are seeking the following reliefs:
  - i. The respondent be directed to make refund of the excess amount collected on account of any area in excess of carpet area.
  - ii. The respondent be ordered to make payment of interest at the rate of 18% per annum accrued on amount collected by the respondent from the complainants on account of delayed offer for possession.

- iii. To 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.
- iv. To direct the respondent to pay litigation cost @ Rs. 50,000/- to the complainants.
- v. To pass orders against the respondent in terms of section 59 of the Act for the failure on part of the respondent to register itself with this authority under the Act.

**RESPONDENT'S REPLY:**

6. The respondent also submitted that the complainant applied for allotment of a service apartment to be known as "Imperial Suite" situated at Badashapur, Sector-67, Tehsil & District Gurugram, Haryana. Thereafter, through premises buyer agreement dated 26.06.2012, the complainant agreed to purchase the said premises bearing no. 221, second floor, area 650/- sq. ft. approx. at the rate of Rs.7,092/- 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.

7. The respondent also submitted that at the time of signing the said premises buyer agreement, the complainants 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. 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 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.

8. The respondent also 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 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.

9. The respondent also submitted that the complainants have 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.

10. 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.
11. That there is no allegation in the complaint nor any evidence filed by complainant that the 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.

12. 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/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.

13. That the above mentioned case is an abuse of process of law and is not maintainable at all in the eyes of law. The complainants have concocted a false and baseless story and the present complaint has been filed with malafide intention and to gain by way of its illegal design, motive and plan. The complainants have 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.
14. 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 complainants have not disclosed anything as to how the present complaint is within the jurisdiction of present authority/forum/court/tribunal. Thus, the complaint of the complainants 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 complainants, the present complaint is not maintainable before this authority.

15. 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.
16. 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:**

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

- i. With respect to the **first issue**, as the respondent had received the occupation certificate on 18.10.2018 after the date of commencement of the Real Estate (Regulation and Development) Act, 2016. Therefore according to section 3 of the Act, the promoter is liable for registration with this authority.
- ii. With respect to **second issue**, the complainant is advised to approach appropriate forum regarding levy of GST.
- iii. With respect to **third and fourth issue**, the complainant has not produced any document with regard to selling of super area in place of carpet area by the respondent to the allottees or respondent's failure to obtain insurances.
- iv. With respect to the **fifth issue** raised by the complainant, the authority came across that as per clause 15 of premises buyer agreement, the possession of the said apartment was to be handed over within 36 months plus grace period of 6 months from the date of sanction of revised sanction plans. The premises buyer

agreement was executed on 26.06.2012. But respondent admitted in his reply that revised sanction plan dated is 13.11.2013 Therefore, the due date of possession shall be computed from 13.11.2013. 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 sanction of revised sanction plan 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 13.05.2017 and the possession has been delayed by 1 year 11 months 19 days. The complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.70% per annum w.e.f 13.05.2017 till date of offer of possession as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

#### **FINDINGS OF THE AUTHORITY:**

18. 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.

19. 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.

19. As per clause 15 of the apartment buyer agreement dated 26.06.2012 for unit No.221, 2<sup>nd</sup> floor, in project “Imperial Suite” Sector-67, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of sanction of revised building plan i.e. 13.11.2013 + 6 months grace period which comes out to be 13.5.2017. Occupation certificate was received by the respondent on 18.10.2018. Complainant has already paid Rs.47,50,583/- to the respondent against a total sale consideration of Rs.47,50,583/-. Therefore, the respondent is liable to pay delayed possession charges to the complainant at prescribed rate of interest i.e. 10.70% per annum w.e.f 13.05.2017 till

date of offer of possession as per the provision of section 18(1) of the Real Estate ( Regulation and Development) Act, 2016.

**DECISION AND DIRECTIONS OF THE AUTHORITY:**

20. 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. 13.05.2017 till date of offer of possession as per the provisions of proviso to section 18(1) of the Real Estate ( Regulation and Development) Act, 2016.
- ii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for delayed period.
- iii. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.70%

by the promoter which is the same as is being granted to the complainant in case of delayed possession.

- iv. The arrears of interest accrued so far shall be paid to the complainants within 90 days thereafter monthly interest to be paid before 10<sup>th</sup> of every subsequent month.

21. The order is pronounced.

22. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated : 02.05.2019

Judgement uploaded on 28.05.2019

HARERA  
GURUGRAM