

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

Complaint no. : 486 of 2019
First date of hearing: 18.04.2019
Date of decision : 02.05.2019

Mr. Nishat Hasin Khan
R/o. Flat no. 204, Essel Towers,
M.G. Road, Gurugram,
Haryana-122002.

Complainant

Versus

M/s JMD Group Ltd.
Address: - 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:

Shri Garv Malhotra and Shri ~~Anand Kotwal~~ *Angad Kotwal* Advocate for the complainant

Shri Ajit Singh Thakur and Shri
K.B. Thakur Advocates for the respondent

ORDER

1. A complaint dated 22.01.2019 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development)

*Corrected vide order
dated 03/07/19.*

Rules, 2017 by the complainant, Mr. ~~Nishant~~ ^{Nishat} Hasin Khan against the promoter, M/s JMD Group Ltd., on account of violation of clause 15 of commercial premises buyer's agreement dated in respect 28.10.2010 of space no. CW-418, 4th floor, measuring 515.54 sq. ft. in the project, namely 'JMD ~~Suburio~~ ^{Suburbio}' located at sector 67, District Gurugram for delay in delivery of possession from due date which is in violation of section 11(4)(a) of the Act *ibid.*

2. Since the commercial premises buyer's agreement dated 28.10.2010 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively, therefore, the authority has decided to treat this complaint as an application for non-compliance of obligation on the part of the respondent under section 34(f) of the Act *ibid.*

3. The particulars of the complaint are as under: -

1.	Name and location of the project	"JMD Suburio ^{Suburbio} " at Sector-67, Gurugram.
2.	Nature of real estate project	Multi-storeyed commercial complex
3.	Total area of the project	4.237 acres (Pg.33 of the complaint)

Corrected vide order
dated 03/07/19.



4.	DTCP license no.	291 of 2007 dated 31.12.2007
5.	Office space no.	CW-418, 4 th floor.
6.	Measuring area of the apartment	515.54 sq. ft.
7.	RERA registered / not registered	Registered vide no. 312 of 2017 for area 1.857 acres commercial colony
8.	Revised date of completion of project as per RERA registration certificate	31.12.2019
9.	Date of booking	09.09.2010
10.	Date of commercial premises buyer's agreement	28.10.2010 (Annx 2)
11.	Payment plan	Construction linked payment plan (Pg. 32 of the complaint)
12.	Date of sale agreement between the original allottee and the complainant	28.09.2011 (Annx 3)
13.	Total consideration as per the agreement	Rs. 25,23,568.30 /-(as per the complainant's version)
14.	Total amount paid by the complainant till date as per the receipts annexed	Rs. 26,48,873/-
15.	Due date of delivery of possession as per clause 15 of the commercial space buyer's agreement dated 28.10.2010. Note- 3 years from the date of execution of agreement+ 6 months' extended period.	28.04.2014
16.	Date of offer of possession letter	03.12.2018 (Annx 5)
17.	Date of receipt of occupation certificate	18.10.2018 (Pg. 12 of the reply)
18.	Total delay in delivery of possession	4 years and 7 months approx.

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 space buyer agreement dated 28.10.2010 is available on record for the aforesaid office space according to which the possession of the said unit was to be delivered to the complainant by 28.04.2014. However, the possession was offered by the respondent on 03.12.2018 after receipt of occupation certificate i.e. after a delay of 4 years and 7 months approx. which is in violation of obligation of promoter under 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 respondent through its counsel appeared on 18.04.2019. The case came up for hearing on 18.04.2019 and 02.05.2019. The reply has been filed on behalf of the respondent on 11.02.~~2018~~²⁰¹⁹ which has been perused by the authority.

Facts of the complaint: -

6. Briefly stated, facts relevant for the disposal of the present complaint are that Mr. Jitin Kumar Makkar, Amit and Parul Pahuja made a booking for purchase of a commercial office space,

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admeasuring 515.54 sq. ft. in the project "JMD ~~SUBURIO~~ ^{SUBURBIO}" at Sector 67, Gurugram being developed by the respondent.

7. On 28.10.2010, commercial space buyer's agreement was executed between Mr. Jitin Kumar Makkar, Amit and Parul Pahuja and the respondent's authorized signatory. As per clause 15 of the agreement, possession of the unit was to be delivered within 36 months from the date of execution of agreement i.e. by 28.10.2013.

8. Complainant, ~~Mr. Jitin Kumar Makkar, Amit and Parul Pahuja~~ ^{Mr. Nishat Hasin Khan} purchased the said office space no. CW- 418 from Mr. Jitin Kumar Makkar, Amit and Parul Pahuja and got it transferred in his name in the records of the developer by endorsement of 20.10.2011. At the time of transfer, the respondent gave no indication either verbally or in writing that no delayed possession charges will be payable due to payments being delayed by the original buyer.

9. The complainant submitted that on notice of possession alongwith demand of payment of the outstanding amount was sent by the respondent.

10. It was alleged by the complainant that despite service of various emails and legal notice the respondent did not give any

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reply as regards payment of delayed possession charges by the developer on account of delay of more than 5 years and 2 months. Hence, the complainant was constrained to file the present complaint before this authority.

Issue to be determined: -

1. Whether the respondent is justified in delaying the possession by more than 5 years and 2 months till today?
2. Whether the respondent is liable to pay delayed possession charges @ 18% p.a. for delayed period?

Reliefs sought: -

1. Direct the respondent to pay delayed possession interest on pro rata monthly basis before the 10th of every month till the possession is handed over.
2. Direct the respondent to pay Rs. 50,000/- as legal costs.

Respondent's reply:-

11. The respondent in their reply denied each and every averment made by the complainant. It was submitted by the respondent that the complainant applied for allotment of a commercial unit in respondent's multi-storeyed commercial complex - JMD Suburbio, situated at village Badashapur, Sector - 67, Tehsil &

District Gurgaon, Haryana. Thereafter, through 'commercial premises buyer's agreement' dated 28.10.2010, the complainant agreed to purchase a commercial unit no. CW-418, fourth floor, (area 515.54 sq. ft. approx.) in said commercial complex at the rate of Rs.4895/- per sq. ft and accepted the terms and conditions of said agreement and after inspection of site and also after verification and confirmation in all respect regarding the all sanctions and approvals the complainant executed the said agreement.

12. At the time of signing the said commercial premises buyer agreement the respondent clarified to the complainant of the facts that M/s. Anand Dham Realtors Pvt. Ltd. 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 commercial premises buyer Agreement, the respondent clarified the fact to the complainant 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 completed the project in time and also have received occupation certificate with the concerned authorities on dated 18.10.2018 and the respondent has already issued the letter regarding the offer of possession.

13. The respondent has submitted that the complainants opted for construction linked plan for the payment of instalments 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/allottee(s) about the completion of said project and assured after receipt of occupation certificate, possession of allotted units shall be handed over to all the allottee(s).
14. The respondent has contended that the complainant has 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 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 commercial unit after receipt of occupation certificate in terms of clause 16 of said agreement. The complainant breached fundamental terms of the said agreement. 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.

15. 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. The complainant has 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.

16. 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 malafide intention and to gain by way of its

illegal design, motive and plan. The complainant has not come before the authority with clean hands and has filed the above mentioned complaint suppressing and distorting material facts from the authority and therefore, this present complaint is liable to be dismissed with cost.

17. The respondent has submitted that the present complaint is beyond the scope of this 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. 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.
18. The respondent has 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.

Note - Written arguments of the complaint has been filed by the complainant which is part and parcel of the facts mentioned in the complaint filed by the complainant.

Determination of Issues-

19. As regards **first and second issue** raised by the complainant it is observed by the authority from the perusal of record that as per clause 15 of the commercial space buyer's agreement dated 28.10.2010, the possession of the allotted office space no. CW-418 was to be delivered within a period of 36 months plus 6 months grace period from the date of execution of agreement.

Relevant portion of clause 15 is reproduced below:

"Company to the Unit Allottee(s) within three years from the date of sanction of revised Building Plan, the Unit Allottee (s) within three years from the date of execution of this agreement r further extended period of

six (6) months after the expiry of 36 months as agreed above except the force majeure circumstances. The Company shall not incur any liability if it is unable to deliver the possession of the said premises by the time abovementioned, if the completion of said complex is delayed by reason of.....”

20. Hence, the due date of delivery of possession on calculation comes out to be 28.04.2014. However, the possession was offered by the respondent company on 03.12.2018 (**Annexure 5**) after receipt of occupation certificate dated 18.10.2018 i.e. after a delay of 4 years and 7 months approx. without any explanation for such delay. ~~Moreover, the complainant has denied that he has ever received the said possession letter.~~ So, the authority is of the considered view that since the respondent has failed to fulfil its contractual obligation which is in violation of section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. Therefore, the complainant is entitled for delayed possession charges at the prescribed rate of interest i.e. 10.70% per annum for every month of delay as per section 18(1) proviso of the Act *ibid*.

Findings of the authority:-

21. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as

Deleted vide order dated 03/07/19.

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 complainant at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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.

22. Arguments heard. As per clause 15 of the commercial space buyer's agreement dated 28.10.2010 for unit no CW-418, 4th floor in the project "JMD ^{Suburbio} ~~Suburbio~~", Sector 67, Gurugram, possession was to be handed over to the complainant within a period of 3 years from the date of execution of agreement plus 6 months grace period which comes out to be 28.04.2014. Complainant has already paid Rs. 26,48,873/- to the respondent against the total sales consideration of Rs. 25,23,568/-.

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23. Occupation certificate was received by the respondent on 18.10.2018 and after receipt of OC, they have offered possession of the allotted unit to the complainant on 03.12.2018, ~~however, the complainant has denied to receive the said offer of possession letter ever.~~

24. Since, there is a delay of more than 3 years, so the complainant is entitled for delayed possession charges at the prescribed rate of interest i.e. 10.70% per annum from the due date of delivery of possession till the date of offer of possession letter dated 03.12.2018 in terms of section 18(1) proviso of the Act *ibid*.

Decision and directions of the authority -

25. After taking into consideration all the material facts produced by 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 directions to the respondent: -

- (i) The respondent is directed to serve the possession letter dasti to the complainant within a week from the date of this order.
- (ii) The respondent is liable to pay interest for every month of delay at prescribed rate i.e. 10.70% p.a. from 28.04.2014

*Corrected vide order
dated 03/07/19.*


(due date of delivery of possession) till the offer of possession i.e. 03.12.2018.

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

26. Since the project is registered for 1.857 acres commercial colony and the entire area of the project land is not registered, so the authority has decided to take suo moto cognizance of this fact and direct the registration branch to issue notice against the respondent under section 59 of the Act for not getting the entire

project registered. A copy of this order be endorsed to the registration branch.

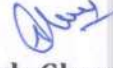
27. The order is pronounced.
28. Case file be consigned to the registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: -02.05.2019.


(Subhash Chander Kush)

Member

Corrected judgement uploaded on 04.07.2019


HARERA
GURUGRAM

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APPEARANCE:

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Advocate for the complainant
Shri Ajit Singh Thakur and Shri K.B. Thakur
Advocates for the respondent

ORDER

1. A complaint dated 22.01.2019 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development)

Rules, 2017 by the complainant, Mr. Nishant Hasin Khan against the promoter, M/s JMD Group Ltd., on account of violation of clause 15 of commercial premises buyer's agreement dated in respect 28.10.2010 of space no. CW-418, 4th floor, measuring 515.54 sq. ft. in the project, namely 'JMD Suburio' located at sector 67, District Gurugram for delay in delivery of possession from due date which is in violation of section 11(4)(a) of the Act *ibid*.

2. Since the commercial premises buyer's agreement dated 28.10.2010 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively, therefore, the authority has decided to treat this complaint as an application for non-compliance of obligation on the part of the respondent under section 34(f) of the Act *ibid*.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	"JMD Suburio" at Sector-67, Gurugram.
2.	Nature of real estate project	Multi-storeyed commercial complex
3.	Total area of the project	4.237 acres (Pg.33 of the complaint)

4.	DTCP license no.	291 of 2007 dated 31.12.2007
5.	Office space no.	CW-418, 4 th floor.
6.	Measuring area of the apartment	515.54 sq. ft.
7.	RERA registered / not registered	Registered vide no. 312 of 2017 for area 1.857 acres commercial colony
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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 space buyer agreement dated 28.10.2010 is available on record for the aforesaid office space according to which the possession of the said unit was to be delivered to the complainant by 28.04.2014. However, the possession was offered by the respondent on 03.12.2018 after receipt of occupation certificate i.e. after a delay of 4 years and 7 months approx. which is in violation of obligation of promoter under 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 respondent through its counsel appeared on 18.04.2019. The case came up for hearing on 18.04.2019 and 02.05.2019. The reply has been filed on behalf of the respondent on 11.02.2018 which has been perused by the authority.

Facts of the complaint: -

6. Briefly stated, facts relevant for the disposal of the present complaint are that Mr. Jitin Kumar Makkar, Amit and Parul Pahuja made a booking for purchase of a commercial office space,

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7. On 28.10.2010, commercial space buyer’s agreement was executed between Mr. Jitin Kumar Makkar, Amit and Parul Pahuja and the respondent’s authorized signatory. As per clause 15 of the agreement, possession of the unit was to be delivered within 36 months from the date of execution of agreement i.e. by 28.10.2013.

8. Complainant, Mr. Jitin Kumar Makkar, Amit and Parul Pahuja purchased the said office space no. CW- 418 from Mr. Jitin Kumar Makkar, Amit and Parul Pahuja and got it transferred in his name in the records of the developer by endorsement of 20.10.2011. At the time of transfer, the respondent gave no indication either verbally or in writing that no delayed possession charges will be payable due to payments being delayed by the original buyer.

9. The complainant submitted that on notice of possession alongwith demand of payment of the outstanding amount was sent by the respondent.

10. It was alleged by the complainant that despite service of various emails and legal notice the respondent did not give any

reply as regards payment of delayed possession charges by the developer on account of delay of more than 5 years and 2 months. Hence, the complainant was constrained to file the present complaint before this authority.

Issue to be determined: -

1. Whether the respondent is justified in delaying the possession by more than 5 years and 2 months till today?
2. Whether the respondent is liable to pay delayed possession charges @ 18% p.a. for delayed period?

Reliefs sought: -

1. Direct the respondent to pay delayed possession interest on pro rata monthly basis before the 10th of every month till the possession is handed over.
2. Direct the respondent to pay Rs. 50,000/- as legal costs.

Respondent's reply:-

11. The respondent in their reply denied each and every averment made by the complainant. It was submitted by the respondent that the complainant applied for allotment of a commercial unit in respondent's multi-storeyed commercial complex - JMD Suburbio, situated at village Badashapur, Sector - 67, Tehsil &

District Gurgaon, Haryana. Thereafter, through 'commercial premises buyer's agreement' dated 28.10.2010, the complainant agreed to purchase a commercial unit no. CW-418, fourth floor, (area 515.54 sq. ft. approx.) in said commercial complex at the rate of Rs.4895/- per sq. ft and accepted the terms and conditions of said agreement and after inspection of site and also after verification and confirmation in all respect regarding the all sanctions and approvals the complainant executed the said agreement.

12. At the time of signing the said commercial premises buyer agreement the respondent clarified to the complainant of the facts that M/s. Anand Dham Realtors Pvt. Ltd. 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 commercial premises buyer Agreement, the respondent clarified the fact to the complainant 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 completed the project in time and also have received occupation certificate with the concerned authorities on dated 18.10.2018 and the respondent has already issued the letter regarding the offer of possession.

13. The respondent has submitted that the complainants opted for construction linked plan for the payment of instalments 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/allottee(s) about the completion of said project and assured after receipt of occupation certificate, possession of allotted units shall be handed over to all the allottee(s).

14. The respondent has contended that the complainant has 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 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 commercial unit after receipt of occupation certificate in terms of clause 16 of said agreement. The complainant breached fundamental terms of the said agreement. 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.

15. 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. The complainant has 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.

16. 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 malafide intention and to gain by way of its

illegal design, motive and plan. The complainant has not come before the authority with clean hands and has filed the above mentioned complaint suppressing and distorting material facts from the authority and therefore, this present complaint is liable to be dismissed with cost.

17. The respondent has submitted that the present complaint is beyond the scope of this 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. 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.

18. The respondent has 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.

Note – Written arguments of the complaint has been filed by the complainant which is part and parcel of the facts mentioned in the complaint filed by the complainant.

Determination of Issues–

19. As regards **first and second issue** raised by the complainant it is observed by the authority from the perusal of record that as per clause 15 of the commercial space buyer's agreement dated 28.10.2010, the possession of the allotted office space no. CW-418 was to be delivered within a period of 36 months plus 6 months grace period from the date of execution of agreement.

Relevant portion of clause 15 is reproduced below:

“Company to the Unit Allottee(s) within three years from the date of sanction of revised Building Plan, the Unit Allottee (s) within three years from the date of execution of this agreement r further extended period of

six (6) months after the expiry of 36 months as agreed above except the force majeure circumstances. The Company shall not incur any liability if it is unable to deliver the possession of the said premises by the time abovementioned, if the completion of said complex is delayed by reason of.....”

20. Hence, the due date of delivery of possession on calculation comes out to be 28.04.2014. However, the possession was offered by the respondent company on 03.12.2018 (**Annexure 5**) after receipt of occupation certificate dated 18.10.2018 i.e. after a delay of 4 years and 7 months approx. without any explanation for such delay. Moreover, the complainant has denied that he has ever received the said possession letter. So, the authority is of the considered view that since the respondent has failed to fulfil its contractual obligation which is in violation of section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. Therefore, the complainant is entitled for delayed possession charges at the prescribed rate of interest i.e. 10.70% per annum for every month of delay as per section 18(1) proviso of the Act *ibid*.

Findings of the authority:-

21. 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 complainant at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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.

22. Arguments heard. As per clause 15 of the commercial space buyer's agreement dated 28.10.2010 for unit no CW-418, 4th floor in the project "JMD Suburio", Sector 67, Gurugram, possession was to be handed over to the complainant within a period of 3 years from the date of execution of agreement plus 6 months grace period which comes out to be 28.04.2014. Complainant has already paid Rs. 26,48,873/- to the respondent against the total sales consideration of Rs. 25,23,568/-.

23. Occupation certificate was received by the respondent on 18.10.2018 and after receipt of OC, they have offered possession of the allotted unit to the complainant on 03.12.2018, however, the complainant has denied to receive the said offer of possession letter ever.

24. Since, there is a delay of more than 3 years, so the complainant is entitled for delayed possession charges at the prescribed rate of interest i.e. 10.70% per annum from the due date of delivery of possession till the date of offer of possession letter dated 03.12.2018 in terms of section 18(1) proviso of the Act *ibid*.

Decision and directions of the authority -

25. After taking into consideration all the material facts produced by 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 directions to the respondent: -

- (i) The respondent is directed to serve the possession letter dasti to the complainant within a week from the date of this order.
- (ii) The respondent is liable to pay interest for every month of delay at prescribed rate i.e. 10.70% p.a. from 28.04.2014

(due date of delivery of possession) till the offer of possession i.e. 03.12.2018.

(iii) The arrears of interest accrued so far be paid by the respondent at the prescribed rate of interest of 10.70% per annum within 90 days from the date of this order.

(iv) Complainant is also directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. Interest on the due payments from the complainant shall be charged from the complainant at the prescribed rate of interest i.e. 10.70% per annum by the respondent which is the same as is being granted to the complainant in case of delayed possession.

(v) The respondent - promoter shall not charge anything from the complainant which is not the part of the buyer's agreement.

26. Since the project is registered for 1.857 acres commercial colony and the entire area of the project land is not registered, so the authority has decided to take suo moto cognizance of this fact and direct the registration branch to issue notice against the respondent under section 59 of the Act for not getting the entire

project registered. A copy of this order be endorsed to the registration branch.

27. The order is pronounced.
28. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: -02.05.2019.

Judgement uploaded on 27.05.2019

(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram



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