

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

**Complaint no. : 59 of 2019**  
**First date of hearing : 09.04.2019**  
**Date of decision : 02.05.2019**

Mr. Sudhanshu Maggon  
R/o : Flat no. 263, Samrat Ashoka Enclave,  
CGHS Ltd. Plot no. 6, Sector-18A, Dwarka, New Delhi  
Also at: House no. 536, Sector-4, R.K.Puram,  
New Delhi

**Complainant**

Versus

M/s. JMD Ltd. (through its Director/Managing  
Director)  
Office address: JMD Regent Square, 3<sup>rd</sup> floor,  
Main Mehrauli, Gurgaon Road, Gurugram

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

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

**ORDER**

1. A complaint dated 18.01.2019 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. Suddhanshu Maggon against the promoter M/s. JMD Ltd. on account of violation of clause 15 of the commercial premises buyer's agreement executed on 29.11.2011 in respect of apartment described below in the project 'JMD Suburbio', for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act ibid.

2. Since, commercial premises buyer's agreement has been executed on 29.11.2011 i.e. prior to the commencement of the Act ibid, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of 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: -

1.	Name and location of the project	"JMD Suburbio", Sector 67, Gurugram
2.	Nature of real estate project	Multi-storeyed commercial complex

3.	Unit no.	B-16, ground floor
4.	Unit area	728.29 sq. ft.
5.	Project area	4.237 acres
6.	Registered/ not registered	<b>Registered (312 of 2017)- JMD Suburbio-II, 1.857 acres</b>
7.	Revised date of completion as per RERA registration certificate	<b>31.12.2019</b>
8.	DTCP license	291 dated 31.12.2007
9.	Date of occupation certificate	<b>18.10.2018</b>
10.	Date of offer of possession	<b>03.12.2018</b>
11.	Date of commercial premises buyer's agreement	29.11.2011
12.	Total basic sale consideration	BSP- Rs. 6403854/- (as per agreement)
13.	Total amount paid by the complainant	Rs. 66,70,726/- As alleged by the complainant Rs. 66,44,943/- As per the receipts
14.	Payment plan	Construction linked payment plan
15.	Date of delivery of possession	<b>13.05.2017</b> Clause 15- 3 years from date of sanction of revised building plan i.e. 11.11.2013 (as per the reply), + 6 months grace period

4. The details provided above have been checked on the basis of the record available in the case file which has been provided

by the complainant and the respondent. A commercial premises buyer's agreement dated 29.11.2011 is available on record for unit no. B-16 on ground floor, admeasuring super area of 728.29 sq.ft. approximately, according to which the possession of the aforesaid unit was to be delivered by 13.05.2017 and the same was offered by the respondent on 03.12.2018. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled its committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The case came up for hearing on 09.04.2019 and 02.05.2019. The reply has been filed by the respondent and the same has been perused.

#### FACTS OF THE COMPLAINT:

6. Briefly stating the facts of the complaint, are that the respondent allotted unit no. B-16 measuring 728.29 sq.ft. in the commercial project named 'JMD Suburbio' in Sector 67, Village Badshapur, Gurugram. The booking amount of Rs.9,23,108/- was deposited on 18.09.2010 with the

respondent for booking of a commercial unit in the mentioned project of the respondent.

7. The complainant agreed to the schedule of payment which was given to them at the time of signing of commercial premises buyer's agreement dated 29.11.2011 regarding the said commercial unit .

8. At the time of payment of booking amount the officials of the respondent had told the complainant that the possession of the booked commercial unit will be given within 3 years from the date of commercial premises buyer's agreement i.e. on or before 29.11.2014. Further 6 months after the expiry of 36 months was agreed which came out to be 29.05.2015. It is pertinent to mention here that the respondent very cleverly and mischievously committed unfair trade practice by changing the clause 15 of the said agreement by pasting a slip mentioning the date of possession within three years from the date of sanction of revised building plan. It clearly establishes that the complainant was cheated with the date of delivery of possession of the booked commercial unit. The respondent

deliberately failed to insert possession date in the commercial premises buyer's agreement.

9. The commercial premises buyer's agreement was signed between the complainant and the respondent on 29.11.2011.

The total basic sale consideration was Rs.64, 03, 854, /-.

10. The clause 15 of the commercial premises buyer's agreement dated 29.11.2011 mentions that the respondent will handover the possession of the unit within a period of three years from the date of signing of the commercial premises buyer's agreement which was changed to within three years from the date of sanction of revised building plan with further 6 months from the date of expiry of 36 months.

11. The clause 17 of the commercial premises buyer's agreement dated 29.11.2011 specifies that in the event the respondent fails to deliver the possession of the unit to the complainant within the stipulated time period and as per the terms and conditions of the commercial premises buyer's agreement, then the respondent will refund the deposited money to the complainant upon receipt of formal notice to the respondent to terminate the agreement.

12. The complainant paid 95% of the amount of sale consideration as per the payment schedule i.e. Rs. 66,70,726 /- as demanded by the respondent. There is no default on part of the complainant as regard to the payments and that the payments have been duly paid to the respondent within time.
13. The actual ground reality regarding the status of construction of the said project in dispute is absolutely shocking and there is strong reason to believe that the respondent has misrepresented the facts related to the construction status to the complainant and demanded the entire sale consideration illegally and fraudulently.
14. The complainant has been duped off with their hard earned money invested in the said commercial project in present petition. The said investment was made by the complainant with all their efforts to suffice the dream of their family of having their own source of income and live a peaceful and secured life.

**ISSUES TO BE DECIDED:**

15. The complainant has raised the following issues:

- i. Whether the promoter delayed in delivering the possession within the stipulated time period ?
- ii. Whether there has been deliberate or otherwise, misrepresentation on part of the developer where the developer has deposited 95 % of the total sale consideration but the project is not getting completed no sooner than August 2019?

RELIEF SOUGHT:

16. The complainant is seeking the following relief:

- i. Direct the respondent to pay delayed possession charges on the entire amount of sale consideration deposited till date with them to the complainant i.e. on Rs. 66,70,726/- @ 24% interest rate from the date of possession agreed as per the commercial premises buyer's agreement till actual handing over of physical possession of the unit in dispute.
- ii. Direct the respondent to hand over the actual physical possession of the apartment in dispute along with payment of delayed possession charges.



**REPLY ON BEHALF OF RESPONDENT**

17. The respondent submitted that the respondent company, M/s. JMD Ltd. is one of India's most trusted real estate group. 'JMD Ltd.' is an 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 complexes, IT & SEZ & hospitality, in Delhi NCR and other parts of the country.
18. The respondent submitted that at the time of signing the said agreement, the respondent had 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. (hereinafter referred to as "Ansal") and Ansal obtained license no. 291 dated 31.12.2007 from Director of Town and Country Planning, Haryana. At the time of execution of the commercial premises buyer's 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.

19. The respondent submitted that the sanctioned building plans were also inspected and duly seen by the complainant at the time of execution of said agreement, while the respondent company had 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 customer and consent in writing, respondent company has made through its architect a proposed building plan which 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 has received occupation

certificate with the concerned authorities on 18.10.2018 and has already issued the letter regarding the offer of possession.

20. 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 had 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.

21. The respondent submitted 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 of 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. 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. It is submitted that the respondent issued letter of offer of possession to the complainant on 03.12.2018.

22. 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 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 be 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.

23. 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 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.
24. The respondent 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.

25. 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.

26. 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. It is submitted 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

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:

27. In respect of the **first and second issue** to be determined, as per clause 15 of the commercial premises buyer's agreement dated , possession was to be handed over to the complainant within a period of 36 months + 6 months grace period from the date of sanction of revised building plan. The respondent admitted that the revised building plan was sanctioned by the concerned authority on 13.11.2013. therefore, the due date of handing over possession comes out to be 13.05.2017. Further, the occupation certificate has been received on 18.10.2018 and possession has been offered to the complainant vide letter dated 03.12.2018. Thus, keeping in view the status of the project and the intervening circumstances stated above, the authority is of the considered view that refund cannot be allowed at this stage. However, on account of delay in offering possession, the complainant is entitled to delayed possession charges at the prescribed rate of 10.70% per annum from the



due date of possession, i.e. 13.05.2017 till the date of offer of possession, i.e. 03.12.2018.

28. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter.

The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act *ibid*.

29. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

#### **Findings of the authority**

30. **Jurisdiction of the authority-** The project "JMD Suburbio" is located in Sector 67, Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP. 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.

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

31. As per clause 15 of the commercial premises Buyer Agreement dated 29.11.2011 for unit no.B-16, ground floor, in project "JMD Suburbio", Sector-67, Gurugram, possession was to be handed over to the complainant within a period of 3 years from the date of sanction of revised building plan i.e. 13.11.2013 + 6 months grace period which comes out to be 13.05.2017. The occupation certificate was received by the respondent on 18.10.2018 and after the receipt of OC, they have offered the possession of the unit to the complainant on 03.12.2018. However, the complainant has denied to receive the offer of possession. The respondent is directed to serve the possession letter to the complainant within a week. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.70% per annum w.e.f

13.5.2017 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 and Development) Act, 2016. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

**Decision and directions of the authority**

32. The authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent:

- I. The respondent is directed to serve the possession letter to the complainant within a week. As such, 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 the date of offer of possession i.e. 3.12.2018 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016.
- II. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order

- III. The 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 complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. 0
- V. The promoter shall not charge anything from the complainant which is not part of the BBA.
33. The complaint is disposed of accordingly.
34. The order is pronounced.
35. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Date: 02.05.2019

Judgement uploaded on 14.06.2019