

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

**Complaint no. : 2437 of  
2018**  
**First date of hearing: 04.04.2019**  
**Date of decision : 02.05.2019**

1. Shri Vishal Garg  
2. Smt. Payal Garg  
Both R/o 69, GF Woodstock,  
Nirvana Country, Sector 50,  
Gurugram - 122017

**Complainants**

**Versus**

M/s JMD Limited,  
3<sup>rd</sup> floor, JMD Regent Square,  
Main Mehrauli-Gurgaon Road,  
Gurugram, Haryana: 122001.

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Subhash Chander Kush

**Chairman  
Member**

**APPEARANCE:**

Shri Vishal Garg and Smt. Payal Garg Complainants in person

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

**ORDER**

1. A complaint dated 21.01.2019 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 Shri Vishal Garg and Smt. Payal Garg against the promoter M/s JMD Limited on account of violation of clause 15 of the premises buyer agreement executed on 08.04.2011 for unit described below in the project JMD “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 premises buyer’s agreement has been executed on 08.04.2011 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	JMD Imperial Suite, Sector 67, Gurugram
2.	Nature of real estate project	Commercial complex and service apartment
3.	Total area of the project	4.237 acres

4.	DTCP license no.	291 of 2007 dated 31.12.2007
5.	RERA registered/ Not registered	Not Registered
6.	Office space/unit no.	222, 2 <sup>nd</sup> floor
7.	Apartment measuring	650 sq. ft.
8.	Date of execution of premises buyer's agreement	08.04.2011
9.	Payment plan	Construction linked
10.	Basic sale price as per agreement	Rs. 43,00,000/- (excluding other charges)
11.	Total amount paid by the complainant till date as per receipts attached	Rs. 44,10,234/-
12.	Due date of delivery of possession as per clause 15: within 3 years from the date of sanction of revised building plan i.e 13.11.2013 plus grace period of six months	14.05.2017
13.	Delay in handing over possession till the date of offer of possession i.e. 03.12.2018	1 year 6 months and 19 days
14.	Date of 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 complainants and the respondent. A premises buyer's agreement dated 08.04.2011 is available on record for the aforesaid unit according to which the possession of the same was to be delivered by 08.10.2014 The respondent has not

delivered the possession of the said unit as on date to the complainants. 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. The case came up for hearing on 04.04.2019 and 02.05.2019. The reply has been filed on behalf of the respondent has been perused.

**FACTS OF THE COMPLAINT:**

6. The complainants submitted that they along with and respondent JMD Limited through Mr Sunil Bedi entered into a contract on 08.04.2011, wherein the respondent was to construct and deliver a studio apartment of approx. 650 square feet in Sector 67, Gurgaon by name of Imperial Suite in company's project JMD Suburbio. The said unit was booked by complainants on 16.09.2010 by paying Rs. 500,000/- after which respondent allotted unit no. 222 in the said project.
7. It is submitted that complainants and respondent signed the premises buyer's agreement on 08.04.2011 after complainants had paid Rs. 14,52,500.00 (35% of total

purchase price consideration) to respondent. Complainants till date have paid total Rs. 44,00,000/- to respondent towards the said apartment.

8. The complainants submitted that as per clause 15 of premises buyer's agreement, unit was to be delivered to them within 36 months from the date of sanction of revised building plan from competent authority or further extended to six months after expiry of 36 months. Since complainants were never communicated any said date of approval of 'revised plan' and no concurrence of allottees of the units in the project is obtained by the respondent, the date of delivery of the said apartment should have been 16.03.2014 i.e. 42 (36+6) months from the date of first payment by complainants. Complainants have met their obligation under the contract by paying all construction linked instalments till date as demanded by respondent, total value of which is to tune to 95% of agreed purchase price along with all applicable taxes and 100% of IDC/EDC payable. Last payment was made on 19th December 2016, almost two years back.

9. The complainant submitted that the respondent has failed to offer the possession of the said unit till date, even though more than 8 years have lapsed since complainants made the first payment. Complainant have written six letters to various officers of the company in last two years, to enquire about the date of delivery of the said unit. This is in addition to multiple enquires on phone and in personal visits but neither respondent nor their office bearers have replied till date, forget communicating the date of delivery of the apartment.
10. The complainant further submitted that being a major non-compliant to the law of the land, Respondent has not taken HRERA registration as per HRERA Rules for this project despite not obtaining completion or occupation certificate from competent authority on the date of HRERA becoming applicable.

**Issues to be decided:**

11. The following issues are relevant as per the complainant:
- Whether or not the respondent has violated the terms and conditions of the agreement thereby delaying possession?

- ii. Whether the respondent is liable for refund and delayed interest for delay in handing over the actual possession to the complainant?

**RELIEF SOUGHT BY THE COMPLAINANT:**

12. The complainants are seeking the following reliefs:

- i. The respondent be directed to refund the amount of Rs 44,00,234/- along with an interest at the same rate what respondent would have otherwise charged the complainant in case of delayed payment of instalments which is 18% p.a for the delayed period, on total consideration (including basic consideration plus IDC Plus EDC and applicable taxes) of the unit as per Premises Buyer's Agreement i.e. INR 46,32,434.00.
- ii. Any other order that this hon'ble authority deem fit and proper to meet the ends of justice.

**RESPONDENT'S REPLY:**

13. The respondent submitted that the complainant applied for allotment of a studio apartment to be known as Imperial Suite situated at village Badashapur, Sector-67, Tehsil &



District Gurugram, Haryana. Thereafter, through premises buyer agreement dated 08.04.2011. The complainant agreed to purchase the said premises bearing no. 222, second floor (area 650/- sq. ft. approx.) in the said complex for a total basic sale price of Rs. 43,00,000/- 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.

14. It is submitted that at the time of signing the said premises buyer's agreement the respondent clarified all the facts to the complainants and the complainant was well aware of the facts that Ananddham 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 AnandDham and



Ansals 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 customer 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 thereafter applied for the occupancy certificate with the concerned authorities. The respondent received the occupation certificate dated 18.

10.2018 and the respondent is in the process of issuing the offer of possession letter.

15. It is submitted that the complainant 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 granted by the concerned authority 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 allottees 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 also pertinent to mention here that the respondent company is in the process of the offering possession to its esteemed buyers in phased manner.

16. 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.

17. The respondent submitted 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.

18. 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.

19. 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 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.

20. 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.

21. 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.
22. 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:**



23. 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 came across that as per clause 15 of premises buyer agreement dated 08.04.2011, the possession of the said apartment was to be handed over within 3 years plus grace period of 6 months from the date of sanction of revised building plan, which comes out to be 14.05.2017. Complainants had already paid Rs. 44,00,233/- to the respondent against a total sale consideration of Rs. 43,00,000/-.
- ii. With respect to **second issue** raised by the complainants, the due date of possession was 14.05.2017 and the possession of the said unit was not delivered within stipulated time. The respondent has received the occupation certificate on 18.10.2018 and possession of the unit has already been offered on 03.12.2018. 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. Thus, the complainant is entitled for delayed possession

charges at prescribed rate of interest i.e. 10.70% per annum w.e.f 14.05.2017 till the date of offer of possession i.e. 03.12.2018 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

**FINDINGS OF THE AUTHORITY:**

24. 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.
25. 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.

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

27. As per clause 15 of the premises buyer agreement dated 08.04.2011 for unit no. 222, 2<sup>nd</sup> floor, in the project Imperial Suite, Sector 67, Gurugram, possession was to be handed over to the complainant by 14.05.2017. Complainant has already paid Rs. 43,00,234/- to the respondent against a total sale consideration of Rs. 43,00,000(BSP)/-. 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 14.05.2017 till the date of offer of possession i.e. 03.12.2018 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

**DECISION AND DIRECTIONS OF THE AUTHORITY:**

28. 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. 14.05.2017 till the date of offer of possession i.e 03.12.2018.
- ii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The promoter shall not charge anything from the complainant which is not part of premises buyer agreement.
- iv. Interest on due payments from the complainants shall be charged at prescribed rate of interest i.e. 10.70% by the promoter which is the same as in 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

29. The order is pronounced.

30. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:02.05.2019

Judgement uploaded on 21.06.2019