

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

**Complaint no. : 1246 of 2019**  
**Date of First hearing: 20.08.2019**  
**Date of decision : 20.08.2019**

Mrs. Preeti Kakkar

R/o. C-401, Park View Spa, Sector- 47,

Gurugram (Haryana)

**Complainant**

Versus

JMD Limited

**Office at:** 3<sup>rd</sup> Floor, JMD Regent Square,

M.G. Road, DLF Phase- 2,

Sector 25, Gurugram (Haryana)- 122001.

**Respondent**

**CORAM:**

**N. K. Goel**

*(Former Additional District and Sessions Judge)*

Registrar –cum- Administrative Officer (Petition)

Haryana Real Estate Regulatory Authority, Gurugram

(Authorised by resolution no. HARERA,

GGM/Meeting/2019/Agenda 29.2/Proceedings/16th July 2019)

**EXPARTE ORDER**

1. The present complaint relates to a commercial premises buyer's agreement dated 13.09.2011 executed between the complainant and the respondent promoter, not registered with this Authority, in respect of office space measuring 377.50 sq. ft. super area bearing no. CW-53, ground floor of

*16/08/19*  
*20/8/19*





the project, namely "JMD Suburbio- I" situated in Sector 67, Gurugram, (in short, the subject unit) for a total cost of Rs. 39,36,451/- inclusive of parking, EDC, IDC, air conditioning cost, HVAT, contingency, IFMS, ECC and taxes. The complainant opted for construction linked payment plan.

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

1.	Name and location of the project	"JMD Suburio", Sector 67, Gurugram.
2.	DTCP license no.	291 dated 31.12.2007
3.	Nature of real estate project	Commercial complex
4.	Office space/unit no.	CW-53, ground floor.
5.	Measuring area of the allotted flat	377.53 sq. ft.
6.	RERA Registered/ unregistered	Unregistered.
7.	Date of execution of commercial premises buyer's agreement	13.09.2011 (Annx P/2)
8.	Payment Plan	Construction linked payment plan (Pg.31 of the complaint)
9.	Basic sale price of the allotted unit	Rs.33,03,387/- (clause 3 (H) of Annx P/2)
10.	Total consideration as per statement of account	Rs. 40,63,254/- (Annx P/3- copy of statement of accounts)
11.	Total amount paid by the complainant till date	Rs. 34,91,638/- (Annx P/3)
12.	Due date of delivery of possession as per possession	13.03.2015





	clause 15 of the agreement dated 13.09.2011 ( <b>Note-</b> No document pertaining to revised building plan has been filed by the complainant, so due date has been calculated from the date of execution of agreement)	(Note - 36 months plus 180 days grace period from the date of sanction of revised building plan)
13.	Delay in handing over possession till date	Continuous

3. It is stated by the complainant that out of total cost of the said unit the complainant has paid a sum of Rs. 34,91,638/- i.e. more than 90% (inclusive of delay interest @ 18% of Rs. 1,26,803/-)

4. According to the complainant, "the respondent imposed two particular in total cost of unit one is IFMS (Interest free maintenance security) @ Rs. 125/- sq.ft. and imposed cost for contingency @ Rs. 70/- sq.ft. both are contradict to each other this is show malicious intention of builder extract more and more money from buyer pocket and both charges are illegal, unilateral and arbitrary."

5. It is stated by the complainant that the respondent was liable to handover the possession of a developed unit before 13.09.2014. As per FBA clause no. 15 but the builder has not

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offered the possession and not given any reason for inordinate delay for possession.

6. According to the complainant, as per section 19(6) of the Real Estate (Regulation and Development) Act, 2016 (herein after referred to as the Act), the complainant has fulfilled his responsibility in regard to making the necessary payment within time specified in the agreement. But such an inordinate delay in the delivery of possession to the allottee is a violation of the rights of the allottee under the provisions of RERA Act as well as the agreement executed between the complainant and the respondent. By filing the present complaint complainant has demanded delay penalty in terms of Section 18 (1) proviso read with Section 18 (3) of the Act. He does not want to withdraw from the project. Hence, this complaint.

7. The following issues have been raised to be decided by the authority: -

1. Whether the respondent has breached the provisions of the Act as well as the Agreement by not completing





the construction of the said unit in time bound manner?

2. Whether the respondent has breached the terms of agreement, as per terms of flat buyer agreement builder had committed in the FBA clause no. 1.5 and was accordingly obliged and liable to give possession of said unit before 13.09.2014?
3. Whether the respondent has citing a false milestone in payment plan to extract more and more amount without doing any development?
4. Whether the respondent is liable to pay interest on the amount paid to him by the complainant?
5. Whether the respondent liable to pay interest on delay @ 18% as charged from complainant on delay in instalment?
6. Whether the respondent has charged IFMS and contingency are show malicious intention of builder extract more and more money from buyer pocket and both charges are illegal and unilateral and arbitrary?

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7. Whether the respondent charged IFMS but not ready to pay interest is illegal, unilateral and arbitrary?

8. Whether the respondent has unjustly enriched them by misusing the hard-earned money of the complainant for almost 9 years without paying any interest or penalty for the delay in delivery of the said unit?

8. The reliefs sought are detailed as under: -

1. To direct the respondent to pay monthly interest on the amount calculated till date with immediate effect.
2. To restrain the respondent from raising any fresh demand and increasing the liability of the complainant.
3. To direct the respondent to immediately handover the possession of the unit in habitable condition.
4. Pass an order for delay interest on paid amount of Rs. 34,91,638 from 13.09.2014 alongwith pendent lite and future interest till actual possession thereon @ 18%.
5. Direct the respondent to quash the contingency cost.





6. Direct the respondent to pay interest on maintenance security.
9. Notice of the complaint has been issued to the respondent by speed post and also on given email address at [info@jmdgroup.in](mailto:info@jmdgroup.in). The delivery reports have been placed in the file. Despite service of notice the respondent has preferred not to put the appearance and to file the reply to the complaint. Notice to the respondent has also been issued and served on email addresses [info@jmdgroup.in](mailto:info@jmdgroup.in), [jmd@jmdgroup.in](mailto:jmd@jmdgroup.in) *for today* but to no avail. Accordingly, the Authority is left with no other option but to decide the complaint exparte against the respondent.
10. Arguments heard on behalf of the complainant.

**Issue wise findings of the Authority: -**

11. **All issues:-** As per the sufficient and unchallenged documentary evidence filed by the complainant on the record and more particularly the commercial premises buyer's agreement (copy annexure P/3), there is every reason to believe that vide the commercial premises buyer's agreement dated 13.09.2011 the respondent had agreed to handover the





possession of the subject office space/unit to the complainant within a period of 36 months with a grace period of 6 months from the date of revised sanction of building plans. Since, no documents pertaining to the revised building plans have been annexed by the complainant, so the due date has to be calculated from the date of execution of agreement. In other words, the respondent was bound to offer the physical possession of the subject office space/unit to the complainant on or before 13.03.2015. However, the possession of the subject unit has not been offered till date which clearly shows that the respondent has caused delay of more than 4 years in delivery of possession. Hence, it is held that this delay in offering the possession of the subject unit to the complainant by the respondent is in violation of the terms and conditions of the agreement for sale and also violation of Section 11(4)(a) of the Act. On the date of coming into force of the Act the project in question was not complete. Hence it must be considered as "ongoing" project and thus covered under the provisions of the Act and the Rules framed thereunder.



12. Therefore, in the opinion of this Authority the complainant is entitled to interest on delayed offer of possession. Accordingly, it is held that the complainant is entitled for delayed possession charges at the prevalent prescribed rate of interest of 10.65% per annum as prescribed in Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

13. Clause 26 of the Commercial Premises Buyer's Agreement in question inter alia reads as follows:-

*".....The Unit Allottee (s) agrees and undertakes to pay and keep with the Company an Interest Free Maintenance Security Deposit (IFMS) @ Rs. 125/- per sq. ft. of the super area of the said premises in the manner stated in Schedule of Payments (Annexure- II)"*

Therefore, the complainant is not entitled to demand interest on any amount paid by him to the respondent towards IFMS.

**Findings of the Authority:-**

14. 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

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stage. As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purposes for promoter projects 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.

**Decision and directions of the Authority: -**

15. The Authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby directs the respondent to pay delayed possession charges at the prevalent prescribed rate of interest of 10.45% per annum with effect from the committed date of delivery of possession i.e. 13.03.2015 till the date of this order within a period of 90 days from this order in terms of section 18(1) proviso of the Act read with rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 and thereafter monthly interest at the prescribed rate of 10.45% per annum be paid on or before 10<sup>th</sup> day of each succeeding English calendar month.



16. Since the project is not registered so the Authority has decided to take suo moto cognizance of this fact and directs the registration branch to initiate separate proceedings against the respondent under section 59 of the Act for not getting the project registered. A copy of this order be endorsed to the registration branch.

17. The complaint stands disposed of accordingly.

18. The case file be consigned to the registry.

**N. K. Goel**

*(Former Additional District and Sessions Judge)*

Registrar -cum- Administrative Officer (Petition)

Haryana Real Estate Regulatory Authority, Gurugram

(Authorised by resolution no. HARERA,  
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Dated: -.....

Judgement uploaded on 21.08.2019

**HARERA**  
**GURUGRAM**