

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

Complaint no. : 1201 of 2019
First date of hearing: 27.08.2019
Date of decision : 27.08.2019

Mr. Birender Singh
R/o: VPO, Badshahpur Mohalla Ahirwara
(Near Purani Chaupal) Tehsil & District
Gurugram

Complainant

Versus

M/s JMD Group Ltd.
Address: - 3rd Floor, JMD Square,
M.G. Road, Gurugram

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Arvind Yadav
Shri K.B. Thakur and Ajit Singh
Thakur

Advocate for the complainant

Advocate for the respondent

ORDER

1. A complaint dated 03.04.2019 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. Birender Singh against the promoter, M/s JMD Group Ltd., on account of violation of clause 15 of commercial premises buyer's agreement



dated in respect 30.08.2010 of space no. CW-44, ground floor, measuring 601.88 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 30.08.2010 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 statutory 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
4.	DTCP license no.	291 of 2007 dated 31.12.2007
5.	Office space no.	CW-44, ground floor.
6.	Measuring area of the apartment	601.88 sq. ft.
7.	RERA registered / not registered	Not Registered
8.	Date of commercial premises buyer's agreement	30.08.2010
9.	Payment plan	Construction linked payment plan



10.	Total consideration as per statement of account dated 26.12.2018	Rs. 56,47,577/-
11.	Total amount paid by the complainant till date as per statement of account dated 26.12.2018	Rs. 51,66,983/-
12.	Date of revised building plan as alleged by both the complainant and the respondent in the facts and reply respectively	13.11.2013
13.	Due date of delivery of possession as per clause 15 of the commercial space buyer's agreement dated 30.08.2010. Note- 3 years from the date of sanction of revised building plan+ 6 months' extended period.	13.05.2017 (note: calculated from the date of revised building plan as alleged)
14.	Date of offer of possession letter	03.12.2018
15.	Date of receipt of occupation certificate	18.10.2018
16.	Total delay in delivery of possession	1 year 6 months 21 days

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A commercial premises buyer's agreement dated 30.08.2010 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 13.05.2017. However, the possession was offered by the respondent after receipt of occupation certificate on 03.12.2018 i.e. after a delay of 1 year, 6 months and 21 days which is in violation of obligation of promoter under section 11(4)(a) of the Act *ibid*.

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5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 27.08.2019. The case came up for hearing on 27.08.2019. The reply has been filed on 01.05.2019 on behalf of the respondent on which has been perused by the authority.

Facts of the complaint: -

6. The complainant submitted that on 28th August 2010 complainant was approached by the respondent in relation of booking of shop/unit bearing no. CW44 on ground floor having area 601.88 sq feet in the project known as "JMD SUBURBIO" situated at sector 67 Gurugram and in pursuance of the same on 28/08/2010 complainant issued a cheque no. 020728 dated 28/08/2010 for amount of Rs 8,15,625/- in favor of respondent.
7. The complainant submitted that on 30/08/2010 complainant entered in Builder Buyer agreement (BBA) with the respondent and as per said BBA the total sale consideration amount was Rs. 50,64,820/- i.e Rs. 8,415 per sq feet. As per clause 15 of the said BBA, respondent is liable to be delivered the possession to the unit allottee(s) within three years from the date of sanction of revised building plan or further extended period of 6 months

after the expiry of 36 months as agreed above expect the force majeure circumstances.

8. The complainant submitted that the respondent/developer kept on delaying the construction and when the complainant asked them about the possession and completion of the project they make false promises by one pretext or another. The present complaint before this Hon'ble Authority arise out of consistent and persistent non-compliance of the respondent here in with regard to deadlines as prescribed under the BBA executed between the parties. However the complainant came to know that revised building plan was sanctioned on 13/11/2013 and according the date of possession was 13/11/2016 for which the respondent had applied for occupation certificate also but the same has not been granted by competent authority.
9. The complainant submitted that the total amount of Rs 51,66,983/- was paid by the complainant to the respondent as per payment plan / schedule and when the offer of possession / demand letter dated 03/12/2018 was raised by the respondent approximately 95% of the total sale consideration was paid by the complainant to the respondent.

10. The complainant submitted that till date the respondent failed to hand over the physical possession of the unit as per BBA hence the complainant is liable to get interest @ 18 per annum from 13/11/2016. It is submitted that when the complainant fail to pay his instalment with is prescribed period the respondent charged from complainant @18%per annum on delayed amount.

11. The complainant submitted that it is submitted that acts of the respondent here in have caused severe harassment and mentally and that complainant suffered financially loss by the act of respondent of not handing over the physical possession of the unit to complainant. The complaint filed by the complainant here is with in limitation period and complainant has paid the fee as required under law

Issue to be determined -

I. Whether the respondent failed to handover the possession of unit as per the assurance , promises ans as per clause 15 of commercial premises buyer's agreement dated 30.08.2010 of commercial unit no. CW44 on ground floor admeasuring

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601.88 sq. ft. in the project JMD SUBURBIO at sector 67 Gurugram?

II. Whether in terms of provisions incorporated under section 18 of RERA Act 2016 the complainant is liable to get interest @ 18% per annum from 13.11.2016 on the amount deposited by him?

Relief sought: -

a. Direct the respondent to give interest to the complainant on the amount deposited by the complainant at the rate of i.e. @ 18% per annum every month from the due date of possession till the handing over the possession, according to section 18(1) Real Estate (Regulation And Development) Act 2016 read with rule 15 & 16 of Haryana Estate (Regulation & Development) Rules 2017.

Respondent's reply:-

12. The respondent submitted that the respondent company - M/s. JMD Ltd. is one of India's most trusted Real Estate Group. 'JMD Ltd.' is 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 centres/complexes, IT & SEZ & hospitality, in Delhi NCR and other parts of the country.

13. The respondent submitted that the complainant applied for allotment of a commercial unit/space/shop in respondent's multi-storeyed commercial complex - JMD Suburbio, situated at village Badashapur, Sector - 67, Tehsil & District Gurgaon, Haryana.
14. The respondent submitted that 'Commercial Premises Buyer's Agreement' dated 30.08.2010, vide the said agreement the complainant agreed to purchase a commercial unit/space/shop no. CW-44, First Floor, (area 601.88 sq. ft. approx.) in said commercial complex. That at the time of signing the said agreement the respondent had clarified to the complainant of the facts that Anand Dham entered into a development agreement on 20.04.2007 with M/s. Ansal Properties & Infrastructure Ltd. and Ansal obtained license no. 291 dated 31.12.2007 from Director of Town and Country Planning, Haryana. It had clarified to the complainant at the time of



execution of the commercial premises buyer agreement 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 and we have issued the offer of possession letter to our valuable customers.

15. The respondent 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 had requested to the concerned authorities for sanction of revised building plans and same had 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. The developer had completed the construction of said commercial complex and had applied for grant of occupation certificate on 15.06.2016 and same was received on dated 18.10.2018. The respondent company has already intimated to all its prestigious customers/ unit allottee(s) 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(s), which is pending

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due to the non-receipt of occupation certificate by the concerned authorities.

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. 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. It is pertinent to mention here that the respondent has issued offer of possession letter to the complainant.

17. 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.

18. 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.

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19. 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.

Determination of Issues-

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

I. 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 premises buyer's agreement dated 30.08.2010, the possession of the allotted office space no. CW-44 was to be delivered within a period of 3 years plus 6 months grace period from the date of execution of agreement. Grace period of 6 months has been given to the respondent due to exigencies beyond the control



of the respondent. In present case, the due date for delivery of possession will be calculated from the revised building plan dated 13.11.2013. 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 or 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.....”

Hence, the due date of delivery of possession on calculation comes out to be 13.05.2017. However, the possession was offered by the respondent company on 03.12.2018 after receipt of occupation certificate dated 18.10.2018 i.e. after a delay of 1 year, 6 months and 21 days without any explanation for such delay. 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. 10.45% per annum for every month of delay as per section 18(1) proviso read with rule 15 of the rules ibid.

Findings of the authority-

20. 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.
21. 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.

Argument heard.

Brief facts leading to this complaint are that by virtue of clause 15 of the Builder Buyer Agreement dated 30.08.2010 for unit No.CW-44, ground floor, in project "JMD Suburbio", Sector-67, Gurugram, possession was to be handed over to the complainant within a period of three years from the date of sanction of revised building plans i.e. 13.11.2013 + 6 months grace period



which comes out to be 13.05.2017. But, the respondent has offered the possession of the unit to the complainant on 3.12.2018. Complainant has already paid Rs.51,66,983 /-to the respondent against a total sale consideration of Rs.56,47,577/- . As such, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.45% per annum w.e.f 13.05.2017 till 3.12.2018 (the date of offer of possession) as per the provisions of proviso to section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

Decision and directions of the authority -

23. 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 pay the interest at the prescribed rate i.e. 10.45% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 13.05.2017 till the offer of possession i.e. 03.12.2018.

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- ii. The respondent is directed to pay the accrued interest till date at the prescribed rate to the complainant within a period of 90 days from the date of this order. The complainant is directed to take over the possession of the offered unit within a period of one month from the date of issuance of this order.
- iii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed period.
- iv. The promoter shall not charge anything from the complainant which is not a part of the commercial premises buyer's agreement.
- v. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.45% by the promoter which is the same as is being granted to the complainant in case of delayed possession.

24. The order is pronounced.

25. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.08.2019

Judgement uploaded on 10.09.2019

AUTHENTICATED
GURBACHAN KAUR
LEGAL OFFICER

ANAMIKA AHALAWAT
LEGAL ASSISTANT

