

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

Complaint no. : 1202 of 2019
Date of first hearing : 27.08.2019
Date of decision : 27.08.2019

Mr. Kamal Yadav
R/o VPO Badshahpur, Mohalla Ahirwara
(near Purani Chaupal), Gurugram

Complainant

Versus

M/s JMD Limited
Corporate office at: JMD Square,
3rd floor, main M.G. Road, Gurugram.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Arvind Yadav
Shri K.B. 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 and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Kamal Yadav, against the promoter M/s JMD Limited, on account of violation of clause 15 of the commercial premises buyer's agreement executed on 01.10.2011 for unit described below in

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the project "JMD Suburbio" for non-fulfilment of obligations of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the commercial premises buyer's agreement has been executed on 01.10.2011, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligations 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 are as under: -

1.	Name and location of the project	"JMD Suburbio", Sector 67, Gurugram
2.	Project area	4.237 acres
3.	Nature of real estate project	Multi-storeyed commercial complex
4.	DTCP license	291 of 2007 dated 31.12.2007
5.	Registered/ not registered	Not registered
6.	Date of occupation certificate	18.10.2018 (page 8 of reply)
7.	Date of offer of possession	03.12.2018 (page 25 of complaint)
8.	Unit no.	CW-41, ground floor

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9.	Unit area	762.29 sq. ft. (as per agreement, page 13 of the complaint)
10.	Date of commercial premises buyer's agreement	01.10.2011
11.	Total consideration	Rs. 69,86,700/- (as per statement of account, page 24 of the complaint)
12.	Total amount paid by the Complainant as per statement of account at page 24 of the complaint	Rs. 63,92,521/-
13.	Payment plan	Construction linked plan
14.	Due date of delivery of possession as per clause 15 of the said agreement- 3 years from date of sanction of revised building plan, i.e. 13.11.2013 + 6 months grace period.	13.05.2017 Note: The date of revised building plan is 13.11.2013 as per the averments of the respondent at page 2 in the reply and at page 3 of the complaint.
15.	Delay in handing over possession till the date of offer of possession i.e. 03.12.2018	1 year 6 months 20 days

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 01.10.2011 is available on record for unit no. CW-41 on ground floor, according to which the possession of the aforesaid unit was to be delivered by

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13.05.2017. The promoter has failed to deliver the possession of the said unit to the complainant by the due date. Therefore, the promoter has not fulfilled his 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 27.08.2019. The reply has been filed by the respondent on 01.05.2019 and the same has been perused by the authority. The respondent through its counsel appeared on 27.08.2019.

Facts of the complaint

6. The complainant submitted that on 01.10.2011, one Smt. Savatri Hooda entered in commercial premises buyer's agreement with the respondent in relation of booking of shop/unit bearing no. CW-41 on ground floor having area 762.29 sq. ft. at the rate of Rs.8,078 per sq. ft., in the project known as "JMD Suburbio", Sector 67 Gurugram for basic sale price of Rs.61,57,779/-.
7. The complainant submitted that on 29.10.2011, he purchased the said unit from said Smt. Savatri Hooda and the respondent had transferred the said unit in the name of complainant through endorsement in the said agreement. As per clause 15

of the said agreement, the respondent is liable to deliver the possession to the unit to the 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 except 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 made false promises on one pretext or another. The present complaint before this hon'ble authority arise out of consistent and persistent non-compliance of the respondent herein with regard to deadlines as prescribed under the agreement executed between the parties. However, the complainant came to know that revised building plan was sanctioned on 13.11.2013 and accordingly 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.63,92,521/- was paid by the complainant to the respondent as per payment plan/schedule and till the offer of possession letter dated 03.12.2018, the respondent collected

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approximately 95% of the total sale consideration from the complainant.

10. The complainant submitted that till date the respondent has failed to hand over the physical possession of the unit as per the agreement, hence the complainant is entitled to get interest @ 18% per annum on delayed possession. It is submitted here that when the complainant fails to pay his installment within prescribed period, the respondent used to charge from complainant interest @18% per annum on delayed amount.
11. The complainant submitted that acts of the respondent herein have caused severe harassment mentally and that complainant suffered financial loss by the act of respondent of not handing over the physical possession of the unit to complainant.

Issues to be determined

12. The relevant issues as per the complaint are as follows:
 - i. Whether the respondent has failed to handover possession of the said unit as per clause 15 of the agreement dated 01.10.2011 in the said project?

- ii. Whether the actions of respondent amounts to breach of provision enumerated under section 18 of the Act ibid?

Reliefs sought

13. The complainant is seeking the following reliefs:

- i. Direct the respondent to give interest to the complainant on the amount deposited by the complainant at the rate of 18% per annum every month from the due date of possession till the handing over of the possession according to section 18(1) read with rule 15 and 16 of the Haryana Real Estate (Regulation and Development) Rules, 2017.
- ii. Any other relief as this hon'ble authority may deem fit and appropriate in the facts and circumstances of the present case.

Respondent's reply

14. 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.

15. The respondent submitted that vide commercial premises buyer's agreement dated 01.10.2011, the complainant agreed to purchase space/shop no. CW-41, ground floor, (area 762.29 sq. ft. approx.) in said commercial complex.
16. The respondent submitted that at the time of signing the said agreement, the respondent had clarified to the complainant of the facts that 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.

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17. 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 was 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. The 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. The respondent also has received occupation certificate with the concerned authorities on 18.10.2018 and has already issued the letter regarding the offer of possession.

18. 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.

19. 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 and 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

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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 and developed the said project, the complainant is only entitled to make balance payment and take possession of said unit as per the said agreement.

20. 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

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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.

21. 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.

22. The respondent submitted that the present complaint is beyond the scope of this authority as the respondent company

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has already applied for OC 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.

23. 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.

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24. 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 authority decides seriatim the issues raised by the parties as under:

25. In respect of the **first and second issue** raised by the complainant, as per clause 15 of the commercial premises buyer's agreement dated 01.10.2011, possession was to be handed over to the complainant within a period of 3 years from date of sanction of revised building plan, i.e. 13.11.2013 (as per averment of the respondent in reply, para 7, page 2 of the reply) + 6 months grace period i.e. by 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, on account of delay in offering

possession, the complainant is entitled to interest at the prescribed rate of 10.45% per annum for every month of delay from the due date of possession, i.e. 13.05.2017 till the date of offer of possession, i.e. 03.12.2018 in terms of section 18 (1) proviso of the Act ibid read with rule 15 of the Rules ibid.

Findings of the authority

26. **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 dated 14.12.2017 issued by Town & Country Planning Department, to entertain 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 complainant at a later stage.

27. Brief facts leading to this complaint are that by virtue of clause 15 of the commercial premises buyer's agreement dated 01.10.2011 for the subject unit in the 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 revised

building plans i.e. 13.11.2013 + 6 months grace period which comes out to be 13.05.2017 and the respondent has offered possession of the unit to the complainant on 03.12.2018. As such, the complainant is entitled for delayed possession charges at the prescribed rate of interest i.e. 10.45% per annum w.e.f. 13.05.2017 as per section 18(1) proviso of the said Act for every month of delay, till offer of possession i.e. 03.12.2018.

Decision and directions of the authority

28. 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 parties:

- i. The respondent is liable to pay delayed possession charges at prescribed rate of interest i.e. 10.45% per annum w.e.f. due date of possession i.e. 13.05.2017 as per the provisions of section 18 (1) proviso of the Real Estate (Regulation and Development) Act, 2016 till offer of possession i.e. 03.12.2018 within 90 days from the date of order.
- ii. 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. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. The promoter shall not charge anything from the complainant which is not a part of the said agreement.
 - v. The 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 same as is being granted to the complainant in case of delayed possession.
29. As the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent under the Act *ibid*. A copy of this order be endorsed to registration branch for further action in the matter.
30. Complaint is disposed of.
31. The order is pronounced.
32. Case file be consigned to the registry.



Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.08.2019

