

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

Complaint no. : 1203 of 2019
First date of hearing : 27.08.2019
Date of decision : 27.08.2019

Mr. Kamal Yadav
R/o: VPO Badshahpur Mohalla Ahirwara
Near Purani Chaupal
Teh. and District Gurugram

Complainant

Versus

M/s. JMD Ltd.
(through its Director/Managing Director)
Office address: Corporate office JMD square,
3rd floor, Main Mehrauli-Gurgaon Road,
Gurugram

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Arvind Yadav Advocate for complainant
Shri K.B Thakur and Shri Ajit Singh Thakur Advocates for 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 Ltd. on account of

violation of clause 15 of the commercial premises buyer's agreement executed on 23.08.2010 in respect of unit 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. An amendment to the complaint was filed by the complainant wherein he has stated that he does not intend to withdraw from the project, and he is seeking delayed possession charges. As per amended complaint he reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required. Now the matter is before the authority not for refund and/or compensation but for fulfilment of obligation by the promoter as per section 18(1) of the Act *ibid* due to failure to give possession by the due date as per the said agreement.
3. Since, commercial premises buyer's agreement has been executed on 23.08.2010 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.

4. 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.	CW-45, ground floor
4.	Unit area	573.53 sq. ft.
5.	Project area	4.237 acres
6.	RERA registration certificate	Not Registered
7.	DTCP license	291 dated 31.12.2007
8.	Date of occupation certificate (page 08 of reply)	18.10.2018
9.	Date of offer of possession (page 24 of complaint)	03.12.2018
10.	Date of commercial premises buyer's agreement	23.08.2010
11.	Total sale consideration	Rs.53,94,409/- (as per SOA, page 23) date 07.01.2019
12.	Total amount paid by the complainant	Rs. 49,35,400/- (as per SOA, Page 23) date 07.01.2019
13.	Payment plan	Construction linked payment plan
14.	Date of delivery of possession	13.05.2017 Clause 15- 36 months plus 6 months grace period from date of sanction of revised building plan i.e. 13.11.2013 (as per the reply)

15.	Delay in handing over the possession till date of offer of possession dated 03.12.2018	1 year 6 months 20 days
-----	--	--------------------------------

5. The details provided above have been checked based on the record available in the case file which has been provided by the complainant and the respondent. A commercial premises buyer's agreement dated 23.08.2010 is available on record for subject unit, 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 pay the delayed possession charges for the same.
6. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 27.08.2019. The reply has been filed by the respondent and the same has been perused.

FACTS OF THE COMPLAINT:

7. The complainant submitted that on 9th August 2010 he was approached by the respondent in relation of booking of shop/unit bearing no. CW45 on ground floor having area 573.53 sq feet in the project known as "JMD Suburbio" situated at sector 67 Gurugram and in pursuance of the same on 09.08.2010 the complainant issued a cheque for Rs 5,00,000/-

and on dated 12.08.2010 the complainant issued another cheque for Rs 3,15,625/- in favor of respondent. Thus the complainant paid total amount Rs.8,15,625/- at the time of booking of said unit.

8. The complainant submitted that on 23.08.2010 complainant entered in builder buyer agreement (BBA) with the respondent and as per said BBA the total sale consideration amount was Rs 48,38,299.08/- i.e Rs 8,436 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.
9. 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 on 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. 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.

10. The complainant submitted that the total amount of Rs.49,35,400/- 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.
11. That till date the respondent failed to hand over the physical possession of the unit as per BBA hence the complainant is seeking to get interest @ 18 per annum on delayed possession. It is submitted here that when the complainant fail to pay his installment with is prescribed period the respondent charged from complainant @18%per annum on delayed amount.

ISSUES TO BE DECIDED:

12. The complainant has raised the following issues:

- i. Whether the respondent failed to handover the possession of unit as per the assurance, promises and as per clause 15 of agreement dated 23.08.2010 of commercial unit no. CW45 on ground floor admeasuring 573.53 sq ft in the project JMD Suburbio at sector 67 Gurugram?
- ii. Whether the action of respondents amount to breach of provision enumerated under section 18 of RERA Act ?
- iii. Whether in terms of provisions incorporated under section 18 of RERA Act 2016, the complainant is entitled to get interest @ 18% per annum for delayed possession on the amount deposited by him?
- iv. Whether the respondent has failed to honour the terms and conditions of the statutory condition / approval and thus, is it liable to be proceed against under the provisions of Real Estate (Regulation and Development) Act, 2016?

RELIEF SOUGHT AS PER AMENDED COMPLAINT

1. Direct the promoter/respondent to deliver possession and pay interest at prescribed rate for every month of delay till the handing over of the possession as per section 18(1) of the Act *ibid*.

REPLY ON BEHALF OF RESPONDENT

13. 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.
14. The respondent submitted that complainant applied for the commercial unit in respondents project through commercial premises buyer's agreement dated 23.08.2010 and complainant agreed to purchase the subject unit.
15. 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.

16. 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.

17. 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. It is submitted that occupation certificate has been received on 18.10.2018.

18. 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 must 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.

19. 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.

20. 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.

21. 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.

22. 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 issue wise findings of the authority are as under:

23. In respect of the **all issues** raised by the complainant, as per clause 15 of the commercial premises buyer's agreement dated 23.08.2010 for unit No. CW-45, ground floor, in project "JMD Suburbio, Sector-67, Gurugram, possession was to be handed over to the complainant within 36 months 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 03.12.2018. Complainant has already paid Rs. 49,35,400/- to the respondent against the total sale consideration of Rs53,94,409/-. 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 03.12.2018 (the date of offer of possession) as per the provision of section 18(1) of the real estate (Regulation & development) Act, 2016.

FINDINGS OF THE AUTHORITY

24. **Jurisdiction of the authority-** The project "JMD Suburbio" is 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.
25. 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.
26. Brief facts leading to this complaint are that by virtue of clause 15 of the commercial premises buyer's agreement dated 23.08.2010 for unit No. CW-45, ground floor , in project "JMD

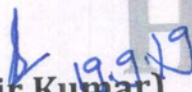
Suburbio, Sector-67, Gurugram, possession was to be handed over to the complainant within 36 months from the date of sanction of revised building plans i.e 13.11.2013 + 6 months grace period which comes out to be 13.05.2017 but the respondent has offered the possession of the unit to the complainant on 03.12.2018. Complainant has already paid Rs. 49,35,400/- to the respondent against the total sale consideration of Rs53,94,409/-.

DECISION AND DIRECTIONS OF THE AUTHORITY

27. 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 to the respondent in the interest of justice and fair play:

- i. The respondent is directed to give delay possession charges from due date of possession i.e. 13.05.2017 to offer of possession i.e. 03.12.2018 at the prescribed rate interest i.e. 10.45%

- ii. The arrears of interest accrued so far shall be paid to the complainant within 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 to delay period of possession.
 - iv. The promoter shall not charge anything from the complainant which is not the part of the BBA.
28. The complaint is disposed of accordingly.
29. The order is pronounced.
30. Case file be consigned to the registry.

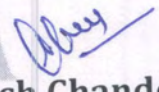

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 27.08.2019

Judgement uploaded on 19.09.2019


(Subhash Chander Kush)

Member