

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

Complaint no. : 1377 of 2019
Date of first hearing : 27.08.2019
Date of decision : 27.08.2019

Smt. Savita Aggarwal (through general
power of attorney holder Shri Moti Ram
Aggarwal)
R/o House no. 1A/40, West Punjabi Bagh,
New Delhi-110026

...Complainant

Versus

M/s JMD Limited (through Managing
Director/ Director/ Authorised Signatory)
Office at: 6, Devika Tower, सत्यमेव जयते
Upper Ground Floor, Nehru Place,
New Delhi-110019

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Praveen Sharma
Shri Moti Ram Aggarwal
Shri K.B. Thakur and Shri Ajit
Singh Thakur

Advocate for the complainant
SPA on behalf of complainant
Advocates 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 Smt. Savita



Aggarwal (through general power of attorney holder Shri Moti Ram Aggarwal), against the promoter M/s JMD Limited (through Managing Director/ Director/ Authorised Signatory), on account of violation of clause 15 of the commercial premises buyer's agreement executed on 25.10.2010 for unit described below in 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 25.10.2010, 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.	Nature of real estate project	Multi-storeyed commercial complex
3.	Unit no.	CW-05, ground floor
4.	Unit area	817.98 sq. ft.



		(as per agreement, pg. 46 of the complaint) Note: Vide e-mail dated 09.01.2019, the area was revised to 831 sq. ft. (annexure-P/33, pg. 99 of the complaint)
5.	Project area	4.237 acres
6.	Registered/ not registered	Not registered
7.	DTCP license	291 of 2007 dated 31.12.2007
8.	Date of occupation certificate	18.10.2018
9.	Date of offer of possession	03.12.2018
10.	Date of booking	22.10.2010 (as per the complaint)
11.	Date of commercial premises buyer's agreement	25.10.2010
12.	Total consideration	Rs. 69,02,580/- (as per statement of account dated 09.01.2019, pg 99 of the complaint)
13.	Total amount paid by the complainant	Rs. 62,94,088/- (as per statement of account dated 09.01.2019, pg 99 of the complaint)
14.	Payment plan	Construction linked payment plan
15.	Date of delivery of possession	13.05.2017 Clause 15- 3 years from date of sanction of revised building plan, i.e. 13.11.2013 (as per averment of the respondent in reply, para 6, pg 3 of the reply) Note: The said

		date is not supported by any document + 6 months grace period i.e. by 13.05.2017
16.	Delay of number of months/ years upto 03.12.2018	1 year 6 months approx.

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 25.10.2010 is available on record for unit no. CW-05 on ground floor, according to which the possession of the aforesaid unit was to be delivered by 13.05.2017. The promoter has failed to deliver the possession of the said unit to the complainant. 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 and the same has been perused. A rejoinder has been filed by the complainant wherein she has re-asserted the facts stated in the complaint and denied all the contentions of the respondent.

Facts of the complaint

6. The complainant submitted that the respondent vide newspaper Hindustan Times dated 29.08.2010 advertised as "First ever project launching with sanctioned plan" of the project of developing multi - storeyed commercial complex known as "JMD Suburbio". Therefore, as per advertisement of the respondent, the sanctioned plan for the project was obtained before 29.08.2010 which is also apparent from the fact that the respondent vide newspaper dated 10.04.2011 advertised that the construction in the project has commenced i.e. "construction commenced".
7. It is submitted that vide application dated 22.10.2010, the complainant booked a unit in the above-mentioned project launched by the respondent and paid a booking amount of Rs.10,37,000/- vide cheque dated 22.10.2010 in favour of the respondent, which cheque was duly encashed by the respondent.
8. The complainant submitted that the respondent vide commercial premises buyer's agreement dated 25.10.2010 executed between the respondent and the complainant, allotted to the complainant a unit no. CW-05, ground floor measuring 817.98 sq. ft., with basic sale price being

Rs.7,506/- per sq. ft. i.e. Rs.61,39,757.88, further till date the complainant has already paid a sum of Rs.62,94,087.89 which is inclusive of part payment towards cost as well as other charges i.e. EDC, IDC, taxes, charges etc. The last part payment was made on 10.12.2016 against receipt dated 28.12.2016 for Rs.3,20,802/-. Further as per agreed terms & conditions, the complainant is required to pay remaining 5% of basic sale price + IFMS & other charges at the time of handing of possession.

9. It is submitted that although as per clause 15 of agreement dated 25.10.2010, the respondent had agreed to deliver possession within three years from the date of sanction of revised building plan, however the sanction building plan of the project was never revised. It is pertinent to mention that the respondent obtained sanction plan before August 2010 which is apparent from advertisements in newspaper Hindustan Times dated 29.08.2010 and 10.04.2011. The sanction plan was never revised which is also proved from the facts that the respondent never informed or intimated any fact of revised building plan to the complainant. Since the building plan was sanctioned in or before August 2010 therefore the respondent was required to handover possession latest by August 2013, however the respondent



failed to handover possession of said premises by August 2013. Therefore, in terms of Section 18 (1) of Real Estate (Regulation and Development) Act, 2016 the respondent is liable to pay delayed possession charges / interest w.e.f. August 2013 till the date of valid & legal delivery of possession to the complainant.

10. The complainant submitted that as per clause 16 of agreement, the respondent was liable to handover possession of said premises after obtaining completion certificate and occupancy certificate, although the respondent obtained occupancy certificate dated 18.10.2018, however till date the respondent has not obtained completion certificate. As such letter for offer of possession dated 03.12.2018 (received vide mail dated 06.12.2018) and letter of offer of possession dated 05.01.2019 (despatched on 09.02.2019 and received on 12.02.2019) and demand letter dated 09.01.2019 (received on 18.01.2019) as issued by the respondent being in breach of the agreement dated 25.10.2010 as well as settled proposition of law are not valid and legal hence not enforceable. Further, the non-obtaining of completion certificate till date makes it apparent that the construction of said premises is not in accordance with the norms and regulations building bye-laws, which is also in breach of the

said agreement as well as settled proposition of law. Therefore, the respondent is liable to withdraw letter for offer of possession dated 03.12.2018 and letter of offer of possession dated 05.01.2019 as well as demand letter dated 09.01.2019 and issued fresh letter after obtaining completion certificate.

11. It is submitted that upon visiting the said premises on 26.01.2019, the complainant was very shocked to find that the construction of said premises has not yet been completed, since the front portion/entrance of said premises has not been plastered from inside, on the left side of entrance around about 5 ft. in height, there is green colour shaft / pipe which is still uncovered and there is no cemented flooring in the entire said premises. It is pertinent to mention that in the said premises, the respondent was illegally running its site office without any permission or intimation to the complainant, further the respondent had removed the said illegal site office from said premises, after the receipt of legal notice dated 29.01.2019. The respondent is legally liable to complete the construction of the said premises and only then handover possession of said premises to the complainant.

12. The complainant submitted that as per clause 2 (b) of the said agreement, the respondent has agreed to allot one car parking slot for which no separate sum was to be charged from the complainant, further the car parking slot number was to be intimated by the respondent to the complainant at the time of handing of possession of said premises. However, the respondent in its letter of offer of possession or demand letter or otherwise has nowhere specifically described the car parking slot/number to be given to the complainant. Therefore, in terms of clause 2 (b) of the agreement, the respondent is liable to specifically describe the car parking allotted to the complainant.
13. It is submitted that as per the said agreement, the said premises were non air conditioned premises, however in letter dated 09.01.2019, the respondent has illegally demanded air conditioning cost @ Rs.52/- per sq. ft. as well as GST @ 18% on air conditioning cost which the complainant is not liable to pay to the respondent. Therefore, in view of facts and circumstances as stated above the complainant is not liable to pay air conditioning cost @ Rs.52/- per sq. ft. as well as GST @ 18% towards air conditioning cost to the respondent. The respondent has also illegally charged the electric connection charges (ECC) @

Rs.60/- per sq. ft. whereas the respondent is required to charge electric connection charges (ECC) at prorata basis.

14. The complainant submitted that as per GST Rules, it is mandatory that the person charging GST should issue tax invoice, however the respondent has charged GST but has not issued any tax invoice to the complainant. The respondent is also required to deduct input tax credit paid for the period 01.07.2017 to 31.03.2019 upon the payments made by the complainant to the respondent.
15. It is submitted that the respondent in clause 17 of proforma affidavit sent along with offer of possession letter dated 03.12.2018, has wrongly and incorrectly mentioned that in case of change in office space, the complainant, shall not demand any claim/compensation from the respondent, however the clause 17 of proforma affidavit is in violation of terms and conditions of agreement since clause 14 of agreement states that in case there is any alteration, change or modification in the said premises then the increase/decrease in cost of said premises is liable to be adjusted. Therefore, the respondent is liable to withdraw the said proforma affidavit and issue fresh proforma affidavit

which is in consonance with terms and condition of agreement.

16. The complainant submitted that the respondent has allotted to the complainant said premises measuring 817.98 sq. ft., however there has been some alteration in area of said premises which the respondent has disclosed in their letters, therefore the respondent is liable to demarcate and disclosed the actual area to be handed over to the complainant.
17. It is submitted that the respondent has also breached the terms & conditions of the said agreement by failing to provide essential facilities such as sewerage, flooring, etc., further although the respondent has provided electricity connection but has not provided electricity fittings within the said premises.
18. The complainant submitted that due to above mentioned facts and circumstances, the complainant through her counsel issued a legal notice dated 29.01.2019 which was duly received by the respondent on 31.01.2019 and 04.02.2019. However, the respondent instead of complying with the terms of legal notice dated 29.01.2019 issued a frivolous letter of offer for possession dated 05.01.2019 thereby once again requiring the complainant to take over the possession

of said premises, which letter was duly replied by the complainant vide legal notice dated 16.02.2019.

19. It is submitted that the respondent has breached terms and conditions of agreement dated 25.10.2010 as well as mandatory provisions of law/rules and have further played fraud and cheated the complainant thereby proving that the conduct of the respondent is negligent, unprofessional, malafide and irresponsible, however inspite of above said conduct of the respondent, the complainant is ready & willing to take the possession of said premises if the respondent complies and fulfil all the contractual and legal obligations and further pays delayed possession charges / interest to the complainant.

20. Issues to be determined

The relevant issues as per the complaint are:-

- I. Whether the respondent has offered possession with delay and there is no reasonable justification for the delay?
- II. Whether the quality of construction is not in accordance with the agreement and legal norms?

- III. Whether the respondent has not given detailed description of car parking?
- IV. Whether letter for offer of possession dated 03.12.2018, letter of offer for possession dated 05.01.2019 & demand letter dated 09.01.2019 being in breach of agreement dated 25.10.2010 and legal provisions are not valid hence liable to be withdrawn after complying terms of agreement?
- V. Whether the respondent has illegally charged/demanded the air conditioning cost @ Rs.52/- per sq. ft. as well as GST @ 18% on air conditioning cost?
- VI. Whether the respondent has not disclosed the alteration in area of unit?
- VII. Whether proforma affidavit is in violation of clause 14 of agreement dated 25.10.2010?
- VIII. Whether the respondent has failed to provide essential facilities such as sewerage, flooring, etc.?
- IX. Whether the respondent has not provided electricity fittings within the said premises?
- X. Whether the project has not been registered with Haryana Real Estate Regulatory Authority, Gurugram?

21. Relief sought

- I. Direct the respondent to pay delayed possession charges / interest @ 18% p.a. w.e.f. August 2013 till the date of valid & legal delivery of possession to the complainant for delay in handing over possession of said premises i.e. unit no. CW-05, ground floor measuring 817.98 sq. ft. in terms of clause 15 of agreement dated 25.10.2010 since the due date of possession was August 2013.
- II. Direct the respondent to withdraw letter for offer of possession dated 03.12.2018 (received vide mail dated 06.12.2018) and letter of offer of possession dated 05.01.2019 (despatched on 09.02.2019 and received on 12.02.2019) and demand letter dated 09.01.2019 (received on 18.01.2019) and issue fresh letter of possession/demand after obtaining completion certificate as per clause 16 of agreement, completing the construction from all corners as per sanctioned building plan.
- III. Direct the respondent to demarcate and disclosed the specific / actual area of shop to be handed over to the complainant since the respondent has not stated about alteration in unit.

- IV. Direct the respondent to provide all essential facilities such water connection, sewerage, etc in the said premises which the respondent has not provided as per agreement.
- V. Direct the respondent to specifically describe the car parking in terms of clause 2 (b) of the said agreement.
- VI. Direct the respondent to provide detailed statement of accounts showing entire payment made by the complainant to the respondent since the complainant as per rules is required to show the details of payments in her income tax returns.
- VII. Pass orders that the respondent is not entitled to charge, and complainant is not liable to pay any air conditioning cost @ Rs.52/- per sq. ft. as well as GST @ 18% since the complainant had booked non air-conditioned unit.
- VIII. Pass orders that the respondent is not entitled to charge electric connection charges (ECC) @ Rs.60/- per sq. ft. but is required to charge on prorata basis.
- IX. Direct the respondent to issue tax invoice/s to the complainant upon the payments made by the complainant to the respondent since as per GST rules tax invoice has to be issued while charging GST.

- X. Direct the respondent to withdraw the proforma affidavit and issue fresh and corrected proforma affidavit in consonance of terms and condition of the said agreement.
- XI. Appropriate action under provisions of RERA Act be taken against the respondent, in case the project has not been registered under the mandatory provisions of RERA Act.
- XII. Any other order which this hon'ble authority may deem fit & proper, in facts & circumstances of the case be passed in favour of the complainant and against the respondent.

Respondent's reply

22. 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.

23. 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.
24. 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.

25. 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.

26. The respondent submitted that the complainant has failed to show any terms/conditions under which she 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 she is entitled to refund/interest, which was purely a civil contract and the terms and conditions has to be followed in letter and 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 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.



27. 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 she was unable to make the balance payments in time as per payment plan and has taken personal loan which she wants to return to the loaner due to her 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 her 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 her obligations under the said agreement.

28. 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.
29. 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. 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.

30. 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.
31. 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:

32. In respect of the **first issue**, as per clause 15 of the commercial premises buyer's agreement dated 25.10.2010, 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 6, pg 3 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 delayed possession charges at the prescribed rate of 10.45% per annum from the due date of possession, i.e. 13.05.2017 to the date of offer of possession, i.e. 03.12.2018.
33. In respect of the **second issue**, the complainant has failed to furnish any material documentary proof in order to prove that the quality of construction is not in accordance with the agreement and legal norms.
34. In respect of the **third issue**, as per clause 2(b) of the agreement dated 25.10.2010, the complainant was allottee was allotted one car parking slot for which no separate charge was to be taken. Accordingly, in the statement of account dated 09.01.2019 annexed with the complaint, no

charge has been levied on account of car parking. However, no detailed description has been laid down in the same.

35. In respect of the **fourth issue**, the complainant has failed to prove that the letter offering possession is in breach of the agreement dated 25.10.2010. Accordingly, the question of withdrawing the same does not arise.
36. In respect of the **fifth issue**, the agreement does not contain any specific clause related to air conditioning cost being inclusive in the total consideration. Further, the respondent has stated in his reply that the said charge is well according to law and agreed terms but has failed to substantiate this statement with requisite documentary proof. Accordingly, due to lack sufficient documentary proof, this issue cannot be determined.
37. In respect of the **sixth issue**, the increase in area of the unit from 817.98 sq. ft. to 831 sq. ft. was specified by he respondent in statement of account dated 09.01.2019 annexed at pg. 99 of the complaint. Accordingly, it cannot be said that the alteration in area of unit was not disclosed.
38. In respect of the **seventh issue**, the proforma affidavit annexed with the offer of possession letter dated 03.12.2018 is in accordance with the agreement dated 25.10.2010

executed by the parties. However, anything in the said affidavit which is outside the scope of the agreement cannot be charged from the complainant.

39. In respect of the **eighth and ninth issue**, the complainant has failed to furnish any concrete documentary proof in order to substantiate his averments. Accordingly, the issue cannot be determined owing to lack of sufficient documentary proof.
40. In respect of the **tenth issue**, the project in question is not registered with the authority. 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.
41. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
- The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.
42. The complainant reserves her right to seek compensation from the promoter for which she shall make separate application to the adjudicating officer, if required.

Findings of the authority

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 issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 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 complainants at a later stage.

Argument heard. Brief facts of the complaint are that as per clause 15 of the commercial premises buyer's agreement dated 25.10.2010 for unit no. CW-05, ground floor, in 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 sanction of revised building plans i.e. 13.11.2013 plus 6 months grace period which comes out to be 13.05.2017. The respondent has offered the possession of the unit to the complainant on 03.12.2018. Complainant has already paid Rs. 62,94,088/- to the respondent against the

total sale consideration of Rs. 69,02,580/-. 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 the date of offer of possession i.e. 03.12.2018 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016.

Decision and directions of the authority

43. 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:
- i. The respondent is directed to pay delayed possession charges at the 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) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession i.e. 03.12.2018.
 - ii. The arrears of interest accrued shall be paid to the complainants 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 for the delayed period.

- iv. The promoter shall not charge anything from the complainant which is not 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 being granted to the complainant in case of delayed possession.
- vi. No maintenance charges shall be charged from the complainant during the pendency of the present complaint before this authority. The objections raised with regard to car parking area, computing of area (+/- within the range of 10%) and AC charges shall be governed as per terms and conditions of the commercial premises buyer's agreement.
44. Complaint stand disposed of accordingly.
45. File be consigned to the registry.


(Samir Kumar)
Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)
Member

Dated: 27.08.2019

Judgement uploaded on 19.09.2019