

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

Complaint no. : 966 of 2019
First date of hearing: 27.08.2019
Date of decision : 27.08.2019

1. Smt. Meena
2. Sh. Jai Prakash
R/o. D-93, Raheja Atlantis, Sector-31,
Gurugram.

Complainant

Versus

M/s JMD Ltd.
Address:- 6, Devika Tower, Upper Ground
Floor, Nehru Place, New Delhi - 110019.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Jai Prakash Complainant no. 2 in person
Shri Prateek Aggarwal Advocate for the complainant
Shri K.B. Thakur and Shri Ajit Singh Thakur Advocates for the respondent

HARERA
ORDER
GURUGRAM

1. A complaint dated 15.03.2019 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 complainants, Smt. Meena and Sh. Jai Prakash against the promoter, M/s JMD Ltd., on account of violation of clause 15 of commercial premises

buyer's agreement dated 23.12.2010 in respect of space no. CW-320, 3rd floor, measuring 515.54 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 23.12.2010 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 Suburbio" at Sector-67, Gurugram. |
| 2. | Nature of real estate project | Multi-storeyed commercial complex |
| 3. | Total area of the project | 4.237 acres (Annx C-1) |
| 4. | DTCP license no. | 291 of 2007 dated 31.12.2007 |
| 5. | Office space no. | CW-320, 3 rd floor. |
| 6. | Measuring area of the apartment | 515.54 sq. ft. |
| 7. | RERA registered / not registered | Not registered |
| 8. | Date of commercial premises buyer's agreement | 23.12.2010 (Annx C-1) |

| | | |
|-----|---|--|
| 9. | Payment plan | Instalment payment plan (as per Annx 11 @ Pg. 20 of the complaint) |
| 10. | Basic sale price as per the agreement | Rs. 17,96,656.90/- (Pg. 13 of the complaint) |
| 11. | Total amount paid by the complainant till date | Rs. 19,37,100/- (as per complainant's version) |
| 12. | Due date of delivery of possession as per clause 15 of the commercial premises buyer's agreement dated 23.12.2010. Note- 3 years from the date of execution of agreement+ 6 months' extended period. | 23.06.2014 |
| 13. | Date of offer of possession letter | 03.12.2018 (Pg. 14 of the reply) |
| 14. | Date of receipt of occupation certificate | 18.10.2018 (Pg. 12 of the reply) |
| 15. | Total delay in offer of possession | 4 years, 5 months and 10 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 complainants and the respondent. A commercial premises buyer agreement dated 23.12.2010 is available on record for the aforesaid office space according to which the possession of the said unit was to be delivered to the complainants on or before 23.06.2014. However, the possession was offered by the respondent after receipt of occupation certificate on 03.12.2018 i.e. after a delay of 4 years, 5 months and 10 days

which is in violation of obligation of promoter under section 11(4)(a) of the Act *ibid*.

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 behalf of the respondent on 01.05.2019 which has been perused by the authority.

Facts of the complaint: -

6. Briefly stated, facts relevant for the disposal of the present complaint are that complainants were allotted an office space no. CW-320 in the project JMD SUBURIO at Sector 67, Gurugram being developed by the respondent. The said space was allotted to the complainants after deposit of Rs. 6,73,295/- on 14.12.2010.
7. On 23.12.2010, commercial space buyer's agreement was executed between the parties. As per clause 15 of the agreement, possession of the unit was to be delivered within 36 months from the date of execution of agreement i.e. by 23.12.2013 or further extended period of six months after the expiry of 36 months i.e. 23.06.2014.
8. The complainants had stated that the respondent did not resolve the issue of payment of delayed interest of them despite repeated reminders through correspondences.

9. It was further stated by the complainants that the respondent has issued offer of possession letter on 05.01.2019 with the demand for payment of outstanding dues. The demand for dues was illegal, arbitrary and against HARERA Act as the respondent themselves are liable to pay interest for delayed period, so they themselves were at fault.
10. The complainants alleged that no occupation certificate was given to them on demand and therefore, the complainants do not know whether the respondent can offer and provide the possession of the unit to the complainants lawfully.
11. The complainants submitted that there is an inordinate and deliberate delay in the completion of the project due to callous attitude, mismanagement of the project. Hence, this complaint.

Issue to be determined: -

- Whether the respondent is liable to pay amount for every month of delay till the handing over of the possession for delayed period of time as well as possession of the unit in question in favour of complainants?

Relief sought: -

1. Direct the respondent to pay delayed possession interest till the handing over of the possession for delayed period of time as well as possession of the unit in question.

2. Direct the respondent to adopt model bye-laws of agreement.

Respondent's reply:-

12. The respondent in their reply denied each and every averment made by the complainants. It was submitted by the respondent that the complainant applied for allotment of a commercial unit in respondent's multi-storeyed commercial complex - JMD Suburbio, situated at Village Badashapur, Sector - 67, Tehsil & District Gurugram, Haryana. Thereafter, through 'commercial premises buyer's agreement' dated 23.12.2010, the complainants agreed to purchase a commercial unit no. CW-320, ground floor, (area 515.54 sq. ft. approx.) in said commercial complex at the rate of Rs. 3485/- per sq. ft and accepted the terms and conditions of said agreement and after inspection of site and also after verification and confirmation in all respect regarding the all sanctions and approvals the complainant executed the said agreement.
13. At the time of signing the said commercial premises buyer agreement the respondent 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. and Ansal obtained license No. 291 dated 31.12.2007 from Director of Town and Country Planning, Haryana. The complainant at the time of execution of the commercial premises buyer 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. 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 on dated 18.10.2018 and the respondent has already issued the letter regarding the offer of possession.

14. The respondent has submitted that the complainants 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 has 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 instead of being a developer and has completed the construction of said commercial complex and 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/ allottee(s) about the completion of said project and assured after receipt of occupation certificate, possession of allotted units shall be handed over to all the allottee(s).

15. The respondent has contended 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 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 commercial unit after receipt of occupation certificate in terms of clause 16 of said agreement. The complainant breached fundamental terms of the said agreement. 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.

16. 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. The complainant has 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.

17. 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.

18. The respondent has 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.

19. The respondent has 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:-

20. As regards **the core issue** raised by the complainants it is observed by the Authority from the perusal of record that as per clause 15 of the commercial space buyer's agreement



dated 23.12.2010, the possession of the allotted office space no. CW-320 was to be delivered within a period of 36 months plus 6 months grace period from the date of execution of agreement. 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, the Unit Allottee (s) within three years from the date of execution of this agreement 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....."

21. Hence, the due date of delivery of possession on calculation comes out to be 23.06.2014. However, the possession was offered by the respondent company after receipt of occupation certificate dated 18.10.2018 on 03.12.2018 i.e. after a delay of 4 years, 5 months, 10 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 of the Act read with rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

Findings of the Authority:-

22. 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.

23. 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.

24. Arguments heard.

Decision and directions of the Authority: -

25. 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 parties: -

- i. The respondent is liable to pay interest for every month of delay at prescribed rate i.e. 10.45% p.a. from due date of delivery of possession (23.06.2014) till the date of offer of possession i.e. 03.12.2018 as per the provisions of section 18 (1) proviso of the Act read with rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 within 90 days from the date of this order.
- ii. Complainants are directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed period of possession. Interest on the due payments from the complainants shall be charged at the prescribed rate of interest i.e. 10.45% per annum by the respondent-promoter which is the same as is being granted to the complainant in case of delayed possession.
- iii. The respondent-promoter shall not charge anything from the complainants which is not a part of the buyer's agreement.

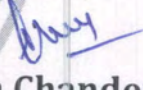
- iv. The complainants are directed to take the possession of the offered unit within a period of one month from the date of issuance of this order.
- v. Since the project is not registered so the authority has decided to take suo moto cognizance of this fact of non-registration and directs the registration branch to initiate necessary action against the respondent under the Act. A copy of this order be endorsed to the registration branch.
1. The order is pronounced.
 2. Case file be consigned to the registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: -27.08.2019


(Subhash Chander Kush)

Member

Judgement uploaded on 20.09.2019

