

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

Complaint no. : 1186 of 2019
First date of hearing: 27.08.2019
Date of decision : 27.08.2019

1. Dr. Ram Singh Yadav
2. Mrs. Savita Yadav
Both R/o. Flat no. 663, Royal Residency,
Plot no. 5, Sector -9, Dwarka,
New Delhi – 110075.

Complainants

Versus

M/s JMD Limited
Address: - JMD Regent Square, 3rd Floor,
Main Mehrauli- Gurugram Road,
Gurugram (Haryana) – 122002.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Dr. Ram Singh Yadav Complainant no. 1 in person
Shri K.B. Thakur and Shri Ajit Singh Thakur Advocates for the respondent

ORDER

1. A complaint dated 20.03.2019 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, Dr. Ram Singh Yadav and Mrs. Savita Yadav against the promoter, M/s JMD Limited on account of violation of clause 15 of commercial premises buyer's

agreement dated in respect 14.02.2012 of space no. B-29, ground floor measuring 719.10 sq. ft. in the project, namely 'JMD Suburbio' 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 14.02.2012 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 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, Badshahpur, Sohna Road, Gurugram.
2.	Nature of real estate project	Multi-storeyed commercial complex
3.	Total area of the project	4.237 acres (Pg.45 of the complaint)
4.	DTCP license no.	291 of 2007 dated 31.12.2007
5.	Office space no.	B-29, Ground Floor
6.	Measuring area of the apartment	719.10 sq. ft.
7.	RERA registered / not registered	Not registered
8.	Date of commercial premises buyer's agreement	14.02.2012 (Pg. 45 of the complaint)

9.	Payment plan	Instalment linked payment plan (Pg. 64 of the complaint)
10.	Total consideration as per letter dated 11.03.2014 as Pg. 77 of the complaint	Rs. 63,25,923/- (BSP)
11.	Total amount paid by the complainant till date	Rs. 64,46,592/- (as alleged by the complainants)
12.	Date of revised building plan	13.11.2013 (as stated by the respondent in para 6 at Pg. 3 of their reply)
13.	Due date of delivery of possession as per clause 15 of the commercial space buyer's agreement dated 14.02.2012	13.05.2017 (Clause 15 – 36 months plus 6 months grace period from the date of sanction of revised building plan)
14.	Date of offer of possession letter	03.12.2018 (Pg. 100 of the complaint)
15.	Date of receipt of occupation certificate	18.10.2018 (Pg. 11 of the reply)
16.	Total delay in delivery of possession	One year, 6 months and 20 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 agreement dated 14.02.2012 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 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 20 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 as per the complainants' version are as follows -

1. As per assurance at the time of booking and builder buyer agreement (BBA), possession was to be handed over to the complainants within a period of 36 months + 6 months' grace period, from the date of booking of shop in question (as payment of more than 10% of the total booking sale price). It comes out to be 01.03.2014. The complainants have already paid Rs.64,46,592/- (receipts enclosed) to the respondent against a total sale consideration of Rs.63,25,923/-. The Developer i.e. JMD Limited is offering possession on 3.12. 2018 after delay of four years and nine months. The complainants should be compensated for the delay period under section 18(1) of the Real Estate (Regulation & Development) Act, 2016.

2. The complainants paid Rs.9,10,000/- (about 15% of the tentative cost) at the time of booking. As per demand letters, the second instalment of Rs.6,09,100/- was paid on 27.10.2010, third instalment of Rs.6,70,561/- was paid on 5/7.01.2011 and fourth instalment of Rs.5,29,910/- was paid on 23.11.2011. Complainants were constantly persuading the company to complete and get signed our BBA and issue receipt of cash amount of Rs.4,10,000/-, which was given on 31.08.2010. But company was interested to adjust it by reducing the total cost of the unit in the same proportion i.e. by Rs.4,10,000/-.
3. As per payment schedule, the date of BBA should be 1.09.2010 but it was intentionally delayed and the company completed it on 14.2.2012 and by that time it had almost collected about 43% of total sale consideration.
4. The complainants submitted that the JMD Limited has not yet registered its JMD Suburbio-1 project with the Haryana Real Estate Regulatory Authority (HRERA), Gurugram. Before handing over possession, the project should be registered with the HRERA, Gurugram as ongoing project

under the Real Estate (Regulation & Development) Act, 2016.

5. It was further submitted by the complainants that before taking possession they requested the respondent in writing to provide copies of all essential certificates including HRERA (Gurugram) registration number & compensation for delay. But the management never bothered to reply the queries that have been raised through our e-mails dated 02.01.2019, 21.01.2019, 13.02.2019 & 25.02.2019 and letters dated 11.01.2019, 29.01.2019, 18.02.2019 & 01.03.2019.
6. The complainants submitted that the builder buyer agreement dated 14.02.2012 is one sided and biased. Terms of the builder buyer agreement have been drafted mischievously in favour of the builder/company. The authority, in its earlier judgement (Complaint No 66 of 2018 dated 5.7.2018 (7) found it wrong, citing Bombay High Court Judgement held in **para 181 of Neelkamal Realtors Suburban Pvt Ltd V/S UOI and Ors. [W.P 27377 of 2017]**, where in, the Bombay HC bench held that:

"Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."

7. In similar case, a judgement was given by the hon'ble HRERA, Gurugram on dated 29.01.2019, complaint no - 1360/2018 wherein it was held that the complainant is entitled for delayed possession charges at prescribed interest i.e. 10.75% per annum w.e.f .27.02.2014 to 3.12.2018 as provision of section 18(1) of the Act. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.

Issue to be determined -

1. Whether the respondent is justified in delaying the possession by more than one year and whether the complainants are entitled for delay possession charges at the prescribed rate of interest in terms of section 18(1) proviso of the Act?

2. Whether the respondent is liable to get its project, JMD Suburbio- I registered with the authority as an ongoing project before handing over possession to the complainants as per section 3(1) of the Act?
3. Whether the possession of the office space in question is offered in an unfinished shape without flooring and paint/POP on the walls?
4. Whether the terms and conditions of the builder buyer agreement are one sided and is in the favour of respondent?
5. Whether the interest free maintenance security to be charges at the time of possession @ Rs.125/- per sq. ft. is too much and on the higher side?

Reliefs sought: -

1. Direct the respondent to pay delayed possession interest on as the prescribed rate of interest in terms of section 18(1) proviso of the Act.
2. Direct the respondent to make the BBA as per the guidelines and standard set under the Real Estate (Regulation and Development) Act, 2016.
3. Direct the respondent to reduce the IFMS to half or the builder should pay interest @ 10.75% p.a. or the prevailing rate per annum on the security deposit.

4. The demand for additional deposit of Rs. 44,124/- for A.C. charges of DX system be withdrawn as it was not the part of BBA.
5. Direct the respondent to deliver the possession of the unit in question with complete flooring and interior wall finishing with POP/paint etc.
6. Direct the respondent to provide the copy of all NOCs, approval letters, registration details, etc. about the project to the buyers.

Respondent's reply:-

8. The respondent in their reply denied each and every averment made by the complainant. 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 14.02.2012, the complainant agreed to purchase a commercial unit no. B-29, ground floor, (area 719.10 sq. ft. approx.) in said commercial complex at the rate of Rs.8797/- 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.

9. 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.

10. 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).

11. 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.

12. 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.

13. 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.

14. 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.

15. 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-

16. As regards **first 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 14.02.2012, the possession of the allotted office space no. B-29 was to be delivered within a period of 36 months plus 6 months' grace period from the date of sanction of revised building plan.

Relevant portion of clause 15 is reproduced below:

"THAT the possession of the said premises is proposed to be delivered by the 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 date of revised building plan was 13.11.2013. 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 after receipt of occupation certificate dated 18.10.2018 on 03.12.2018 i.e. after a delay of one year, 6 months and 20 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. 10.65% per annum for every month of delay as per section 18 of the Act *ibid*.

17. As regards **issue no. 2** raised by the complainants, since the occupation certificate has been received by the respondent on 18.10.2018 i.e. after coming into force of the Haryana Real Estate (Regulation and Development) Rules, 2017. Hence, as per section 2(o) of the Rules, 2017, the project in question is covered under the definition of "ongoing projects" and by not getting the project registered with this authority the respondent has contravened the provision of section 3(1) of the Haryana Real Estate (Regulation and Development) Act, 2016 and is liable to get its project registered.

18. As regards **issue no. 3, 4 and 5** raised by the complainants, the complainants have failed to produce any evidence in support of their allegation and furthermore the complainants have failed to pointing out any specific clause/s to which they can say as arbitrary and in favour of the respondent. Moreover the commercial space buyer's agreement for the unit in question was

signed without any protest, so the complainants is bound by each and every terms of the agreement even that pertains to the payment of charges of interest free maintenance security @ Rs. 125/-. Hence the complainant cannot agitate the issue at this belated stage.

Findings of the Authority-

19. 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.

20. 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.


21. Project is not registered with the Authority. Arguments heard.

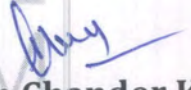
Decision and directions of the authority -

22. 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 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 take necessary action against the respondent under section 59 of the Act. A copy of this order be endorsed to the registration branch.
23. The order is pronounced.
24. 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 20.09.2019

