

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

Complaint no. : 972 of 2021
Date of complaint : 24.02.2021
Date of order : 22.11.2023

Jagdeep Singh Suri, S/o Surender Singh Suri,
R/o: - 15/42, DLF Phase-II, Gurugram, Haryana.

Complainant

Versus

JMD Limited.

Regd. Office at: 06, Upper Ground Floor,
Devika Tower, Nehru Place, New Delhi-110019.

Also at: - 3rd Floor, JMD Regent Square,
M.G Road, Gurugram, Haryana-122001.

Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Maherashi Kaler (Advocate)

Venkat Rao (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the



Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

| S.N. | Particulars | Details |
|------|---|--|
| 1. | Name of the project | JMD Megapolis, Vill Tikri, Gurugram |
| 2. | Nature of project | IT Park |
| 3. | Licensed area | 10.025 acres |
| 4. | DTPC License no. | 157 to 160 of 2017 dated 17.03.2007 |
| 5. | HARERA Registration no. | Not registered |
| 6. | Unit no. | 448, 4th floor (Page 21 of complaint) |
| 7. | Area of the unit | 2221 sq. ft. (super area) (Page 21 of reply) |
| 9. | Date of buyer's agreement | 28.04.2007 [Page 19 of complaint] |
| 12. | Possession Clause | Clause 15 |
| 13. | Due date of possession | 28.04.2010 [Note: Due date of delivery of possession is calculated three years from the date of this agreement] |
| 14. | Total sale consideration as per BBA dated 28.04.2007 at pg. 20 of complaint | Rs.86,61,900/- |
| 15. | Amount paid by the complainant as per SOA on pg. 91 of reply | Rs.28, 11, 900/- |
| 16. | Occupation certificate | 15.11.2013 [page 23 of the reply] |
| 17. | Offer of possession | 08.07.2014 [page no. 87 of the reply] |
| 18. | Legal notice cum Cancellation letter | 22.08.2017 [page 85 of complaint] |

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the complainant was allotted a unit bearing no. 448, admeasuring approx. 2221 sq.ft., on 4th floor in the project of respondent named "JMD Megapolis" at village Tikri, Gurugram vide unit buyer's agreement dated 28.04.2007 for a total sale consideration of Rs.86,61,900/- under progress linked installment payment plan against which he has paid an amount of Rs.28, 11, 900/- in all.
- II. That as per clause 15 of the buyer's agreement, the respondent was obliged to deliver the aforesaid unit to the complainant within three years from the date of the agreement i.e., by 27.04. 2010. However, the respondent has not offered possession of the said unit to the complainant till date.
- III. That the respondent vide demand letter dated 31.07.2012 raised the 15th installment for "On Completion of External Cladding". However, as per the opted payment plan, this demand is an installment before offer of possession. Thus, admittedly, the respondent has breached the essential term of the buyer's agreement by not offering the possession within the committed timeframe.
- IV. That the complainant repeatedly approached the respondent, seeking status of construction of said project/unit and possession of the unit. However, the respondent always failed to give any firm timeline to the complainant.
- V. That the complainant, during his numerous visits also begged and pleaded that in case the unit cannot be handed over, the amount paid

till date be refunded to him along with interest in view of clause 17 of the buyer's agreement. However, the respondent straightaway refused to refund the amount paid by the complainant in complete disregard of the builder buyer agreement and the law of the land.

- VI. That in such circumstances, the complainant was constrained to issue a notice dated 31.07.2019 to the respondent to refund the amount paid by him. However, the said notice was never replied by the respondent.
- VII. That as such, the complainant has been constrained to file the present complaint seeking refund of the amount paid by him to the respondent along with prescribed rate of interest, since the respondent has failed to hand over the possession.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

I. To refund the entire paid-up amount along with prescribed rate of interest.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent vide reply dated 06.09.2021 contested the complaint on the following grounds: -

- i. That a unit buyer agreement dated 28.04.2007 was signed by two co-allottees, the 1st allottee being complainant himself i.e., Shri Jagdeep Singh Suri and the 2nd allottee is Marathon Infrabuild Private Limited. Further, all the payments were paid by the 2nd allottee and every

communication regarding the allotted unit was done with the 2nd allottee. However, the present complaint is filed only by the 1st allottee i.e., Shri Jagdeep Singh Suri. Therefore, the co-allottee namely Marathon Infrabuild Private Limited is a necessary party and required for a complete, proper and effectual adjudication of the present matter, hence the present complaint is liable to be dismissed solely on the ground of non-joinder of party.

- ii. That the project in question was launched way before the RERA Act, 2016 came into force and the occupation certificate has already been granted and therefore project in question is not an ongoing project. Thus, the provisions of the RERA Act, 2016 does not apply in this case.
- iii. That the complainant made default in paying the instalments due towards the total sale consideration of the allotted unit and had not made any payment after 12.06.2007. Therefore, the respondent being a responsible developer/promoter had sent multiples demand letters/reminders/notices dated 06.07.2011, 13.12.2011, 22.12.2011, 10.02.2012, 06.04.2012, 09.04.2012, 31.04.2012, 17.08.2012, 31.08.2012, 28.09.2012, 07.11.2012, 05.12.2012, 15.03.2013, 22.02.2013, 23.03.2013, 13.06.2013, 19.08.2013, 01.08.2014, 11.09.2014, 24.11.2014, 07.01.2015, 21.01.2015, 06.04.2015, 14.04.2015, 01.07.2015, 04.09.2015, 09.09.2015, 25.09.2015, 11.12.2015, 13.01.2016, 13.02.2016, 14.03.2016, 20.04.2016 to the complainant, despite receiving such demand letters/reminders/notices, the complainant failed to make any payment. However, while signing and executing the unit buyer agreement, the complainant has agreed that the timely delivery of the



- unit was subject to timely payment of instalments. Therefore, vide legal notice cum cancellation letter dated 22.08.2017, the complainant was given last opportunity to clear the dues within the seven days from the receipt of the letter. Furthermore, it was informed to the complainant through the same letter that the allotment of the IT unit bearing no. FF-448 and agreement dated 28.04.2007 stands cancelled and terminated as per clause 6 and 7 of the agreement and the respondent shall forfeit the earnest money and the rest of the amount after deducting the earnest money shall be kept in the bank account.
- iv. That the respondent had sent a letter of offer of possession dated 08.07.2014 to the complainant but, the complainant never came forward to take the possession of the allotted unit. Furthermore, the respondent continued to send the reminder letter/demand letter/notices to the complainant till 2016, but he never bothered to take the possession of the unit as a result the respondent cancelled the allotment under Clause 6 & 7 of the agreement vide cancellation letter dated 22.08.2017. Moreover, the respondent after deducting the earnest money from paid-up amount, deposited the refund money of the complainant in Oriental Bank of Commerce in a separate account as a fixed deposit. However, the complainant has still not come forward to take refund money and the interest which it has generated.
- v. That it is specifically mentioned in clause 15 of the agreement it was agreed that the respondent shall not incur any liability if the reason for delay was beyond the control of the respondent or due to non-payment of timely instalments by the allottee. Further other reason contributing to the delay in the project, was non-payment of

instalments by several other allottees in terms of the agreed payment plan. Despite facing such situations, the respondent has completed the project and was granted the occupation certificate on 15.11.2013 and an offer of possession letter was issued to the complainant on 09.04.2014.

- vi. That as per clause 16 of the agreement, the complainant was under obligation to clear the due amount and take the possession of the unit within 30 days of receiving the letter of offer of possession. Therefore, the respondent has fulfilled its obligation but the complainant with an ulterior motive choose not to come forward and take possession of the unit and has filed this complaint in order to put pressure on the respondent to gain illegitimate money from it. Therefore, the present complaint is liable to be dismissed.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Maintainability of the complaint.

8. The respondent submitted that a unit buyer agreement dated 28.04.2007, was executed between the respondent and the two co-allottees, the 1st allottee being complainant himself i.e., Shri Jagdeep Singh Suri and the 2nd allottee is Marathon Infrabuild Private Limited regarding allotment of a unit bearing no. 448, on 4th floor in the project of respondent named "JMD Megapolis" at village Tikri, Gurugram. Further, all the payments were paid by the 2nd allottee and every communication regarding the allotted unit was done with the 2nd



allottee. However, the present complaint is filed only by the 1st allottee i.e., Shri Jagdeep Singh Suri and the 2nd allottee is Marathon Infrabuild Private Limited has not been added in the present complaint. Therefore, the co-allottee namely Marathon Infrabuild Private Limited being necessary party was required to be added for complete, proper and effectual adjudication of the present matter, hence the present complaint is liable to be dismissed solely on the ground of non-joinder of necessary party as laid down by the Hon'ble Supreme Court in Vidur Impex and Traders Pvt. Ltd. v. Tosh Apartments Pvt. Ltd. & Ors. (2012 (8) SCC 384). Hence, the present complaint is not maintainable in the present form and liable to be dismissed as proved under Order I, Rule 9 of the Code of Civil Procedure, 1908. Order I, Rule 9 of the Code of Civil Procedure, 1908 is reproduced as under for ready reference::

"No suit shall be defeated by reason of the mis-joinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it: [Provided that nothing in this rule shall apply to non-joinder of a necessary party.]"

9. The authority is of view that though the provisions of the Code of Civil Procedure, 1908 (CPC) is, as such, not applicable to the proceedings under the Act, save and except certain provisions of the CPC, which have been specifically incorporated in the Act, yet the principles provided therein are the important guiding factors and the authority being bound by the principles of natural justice, equity and good conscience has to consider and adopt such established principles of CPC as may be necessary for it to do complete justice. Moreover, there is no bar in applying provisions of CPC to the proceedings under the act if such



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provision is based upon justice, equity and good conscience. Thus, in view of the factual as well as legal provisions, the present complaint stands dismissed for non-joinder of necessary party with liberty to the complainant to file a fresh complaint by impleading necessary parties.. File be consigned to the registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.11.2023



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