

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

Complaint no. : 833 of 2019
First date of hearing : 27.08.2019
Date of decision : 27.08.2019

1. Nirmal Gupta
2. Garish Kumar
Both R/o 2178 Jalvayu Vihar, Sector-67
Mohali-160062, C/o Dr. Subodh Gupta, Link
Road, Near BDO Office, Mansa Punjab.

Complainants

Versus

M/S JMD Limited
Office at 6 Devika Tower UGF, Nehru Place,
New Delhi-110019.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sushil Yadav Advocate for complainant
Shri K.B. Thakur and Ajit Singh Thakur Advocates for respondent

ORDER

1. A complaint dated 26.02.2019 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 complainants Nirmal Gupta and Garish Kumar against the promoter M/s. JMD Ltd. on

SANDEEP BHUCKAL

LEGAL ASSISTANT

Page 1 of 20

account of violation of clause 15 of the commercial premises buyer's agreement executed on 08.05.2010 in respect of apartment described below in the project 'JMD Empire', 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 complainants wherein they have stated that they do not intend to withdraw from the project and they are seeking delayed possession charges. As per amended complaint they reserves their right to seek compensation from the promoter for which they 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 08.05.2010 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

SANDEEP BHUCKAL

LEGAL ASSISTANT

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 Empire", Gurugram
2.	Nature of real estate project	Commercial complex colony
3.	Unit no.	FF-140, 1 st floor
4.	Unit area	461 sq. ft.
5.	Project area	2.8625 acers
6.	Registered/ not registered	Not registered
7.	Revised date of completion as per RERA registration certificate	Not registered
8.	DTCP license as per completion certificate	02 of 2009
9.	Date of completion certificate (page 09 of reply)	27.07.2018
10.	Date of commercial premises buyer's agreement	08.05.2010
11.	Total sale consideration (as per SOA dated 31.10.2017, page 53)	Rs.28,54,917/-
12.	Total amount paid by the complainants	Rs. 25,66,349/- (as per SOA dated 31.10.2017, page 53)
13.	Payment plan	Construction linked payment plan
14.	Due date of delivery of possession as per clause 15 of the commercial premises buyer's agreement to be delivered by the company to the unit allottee within 3 years from the date of sanction of building plan plus 6 months grace period	08.11.2013 Note: The due date of possession has been computed from the date of execution of agreement as date of sanction of building plan is not available



		from the complaint file.
15.	Delay in handing over of possession	3 years 11 months 25 days
16.	Offer of possession	31.10.2017

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 08.05.2010 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 31.10.2017. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled its committed liability as on date.
6. 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 on 14.05.2019 by the respondent and the same has been perused.

SANDEEP BHUCKAL

LEGAL ASSISTANT

FACTS OF THE COMPLAINT:

7. The complainant submitted that the respondent gave advertisement in various leading newspapers about their forthcoming project named JMD EMPIRE Gurgaon promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements Nirmal Gupta & Garish Kumar, booked a commercial space measuring 461 sq. ft. in aforesaid project of the respondent for total sale consideration is Rs. Rs 2854917/- which includes BSP, car parking, IFMS, PLC etc. The complainants made payment of Rs.2566349/- to the respondent vide different cheques on different dates.

8. The complainant submitted that as per buyers agreement the respondent had allotted a unit no. 140 on 1st floor measuring 461 Sq. Ft. in JMD EMPIRE Gurgaon to the complainant. That as per para no.15 of the builder buyer agreement, the respondent had agreed to deliver the

SANDEEP BHUCKAL

LEGAL ASSISTANT



possession of the flat within 36 months from the date of signing of the approval of building plan.

9. The complainant submitted that complainant regularly visited the site but was surprised to see that construction work was very slow in progress and no one was present at the site to address the queries of the complainant. It appears that respondent has played fraud upon the complainant. The only intention of the respondent was to take payments for the project without completing the work. The respondent mala-fide and dishonest motives and intention cheated and defrauded the complainants. That despite receiving the payment as demands raised by the respondent for the said space and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted space to the complainant within stipulated period.

10. The complainant submitted that it could be seen that the construction of the project in which the complainant commercial space was booked with a promise by the respondent to deliver the flat by 08.11.2013 but was not

SANDEEP BHUCKAL

LEGAL ASSISTANT



completed within time for the reasons best known to the respondent; which clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently.

11. The complainant submitted that the complainant visited the site but are shocked to see that construction was going on very slow speed then the complainant contacted the respondents through mails and personal visit , about the project but the respondent did not gave any satisfactory answer and complainant had paid Rs.28,36,349/- by then as and when demanded by the respondent but the construction was going on at a very slow speed and even the respondent did not know that when they will able to deliver the project and lastly on dated 31.10.2017 the respondent sent the offer of possession letter to the complainant.

12. The complainant submitted that due to this omission on the part of the respondent the complainant had been suffering from disruption , mental torture, agony and also continues to incur severe financial losses. The complainant booked this unit for the purpose of his office of consultant and planned to start

SANDEEP BHUCKAL

LEGAL ASSISTANT



the office in the year 2013 but due to omission on the part of the respondent the complainant incur sever financial losses. This could be avoided if the respondent had given possession of the space on time. The respondent cannot escape the liability merely by mentioning a clause in the agreement. It could be seen here that the respondent has incorporated the clause in one sided buyers agreement and usurp such a huge amount of the complainant.

13. The complainant submitted that on the ground of parity and equity the respondent also be subjected to pay the same rate of interest hence the respondent is liable to pay interest on the amount paid by the complainants @18%per annum to be compounded from the date of amount paid.
14. The complainant submitted that the complainants has requested the respondent several times on making telephonic calls and also personally visiting the office of the respondent either to refund the amount along with interest @ 18% per annum on the amount deposited by the complainant but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainant with his

SANDEEP BRUJIA

LEGAL ASSISTANT

hard earned huge amount and wrongfully gain himself and caused wrongful loss to the complainant.

Issues to be decided:

1. Whether the respondent has incorporated the clause is one sided buyer agreement which is unjustified?
2. Whether the respondent has not refunded the amount paid by the complainant and there is no reasonable justification for the delay?
3. Whether the respondent the interest cost being demanded by the respondent/developer is very higher i.e.18% which is unjustified and not reasonable?

Relief sought:-

In view of the above, complainants seeks the following relief:

- (i) Direct the respondents to give prescribed interest per annum from the date of promissory date of delivery of the commercial space in question.

Reply by the respondent:

15. The respondent submitted that the respondent - M/s. JMD Ltd., is a company incorporated under the provisions of companies


ANSHU BHUCKAL
LEGAL ASSISTANT

Act, 1956 and having its registered office at 6 UGF, Devika Tower, Nehru Place, New Delhi-110019.

16. The respondent submitted that the respondent company - M/s. JMD Ltd. is one of India's most trusted real estate group. 'JMD Ltd.' is 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 centres/complexes, it & sez & hospitality, in Delhi NCR and other parts of the country.
17. The respondent submitted that Mr. Kuldeep Narotra is the authorised person of the respondent company, authorised vide resolution dated 04.02.2017 to defend and represent the respondent company in present complaint.
18. The respondent submitted that the complainants applied for allotment of a showroom/shop/other space in respondent's multi-storeyed commercial complex - JMD Empire, situated at Gurgaon, Haryana. Thereafter, through 'commercial premises buyer's agreement' dated 08.05.2010 the complainant agreed

SANDEEP BHUCKAL
LEGAL ASSISTANT



to purchase a commercial unit/space/shop no. FF-140, first floor, (area 461 Sq. Ft. approx.) in said commercial complex at the rate of Rs.5400/- per sq. ft and accepted the terms and conditions of said agreement.

19. The respondent submitted that at the time of signing the said commercial premises buyer agreement the complainant was well aware of the facts. It is also pertinent to mention herein that sanctioned building plans were also inspected and duly seen by the complainants at the time of execution of said agreement.

20. The respondent submitted that the complainant opted for construction linked plan for the payment of instalments against the said commercial unit and demands were raised in accordance with the payment Plan. It is pertinent to mention here that the commercial premises buyer's agreement was executed on 8th May 2010. As per clause 15 of the said agreement the possession of the said premises was proposed to be delivered by the respondent company within 3 years from the date of sanction of building plan from the competent authorities or further mutually extended period of six months

SANDEEP BHUCKAL



after the expiry of 36 months except the force majeure circumstances. It is pertinent to mention here that there was exception in the said agreement that the company shall not incur any liability if the completion of the building is delayed due to certain unavoidable circumstances. The respondent company had applied for the occupancy certificate vide letter dated 18.09.2015 to the competent authority. The competent authority vide letter dated 25.07.2017 issued occupancy certificate. Thereafter the respondent company vide letter dated 31.10.2017 offered the possession to the complainants.

21. The respondent submitted that the Haryana Real Estate (Regulation and Development) Rules, 2017 is not applicable in the present facts and circumstances. The concerned authority had issued the occupancy certificate vide letter dated 25.07.2017 and the said rules is applicable from 28.07.2017. As per the Haryana Real Estate (Regulation and Development) Rules, 2017 the project is not ongoing project.

22. The respondent submitted that the complainants have failed to show any terms/condition under which they can claim interest. Neither in the complaint nor otherwise the

SANDEEP BRUCKER
LEGAL ASSISTANT



complainants showed/mentioned any term of said agreement or any law under which they are entitled to interest, which was purely a civil contract and the terms and conditions has to be followed in letter & spirit. It is also pertinent to mention herein that the project was completed in 2015 and accordingly application for grant of occupation certificate was made to the concerned authorities and the same has been received in 2017, 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.

23. The respondent submitted that there is no 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.

24. The respondent submitted that the present complaint 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,

SANDEEP BHUCKAL
LEGAL ASSISTANT

motive and plan. The complainant has not come before the hon'ble authority with clean hands and has filed the above mentioned complaint suppressing and distorting material facts from the hon'ble authority and therefore, this present complaint is liable to be dismissed with cost.

25. The respondent submitted that the present complaint is beyond the scope of this hon'ble 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/forum/court/tribunal. 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.

26. The respondent submitted that the complaint does not disclose a cause of action and further there is no merit in the

SANDEEP BHUCKAL
LEGAL ASSISTANT

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.

27. 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. The respondent company submits 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 complainants and perusal of record on file, the issue wise findings are as hereunder:

SANDEEP BHUCKAL

LEGAL ASSISTANT

I. With respect to **all issues** raised by the complainants as per clause 15 of the commercial premises buyer's agreement dated 08.05.2010, the possession of the unit was to be handed over within 3 years plus grace period of 6 months from the date of sanction of building plan. In the present case, no document regarding approval of building plan has been submitted nor the date has been mentioned in the contention of the respondent. Thus, having no other option left, the due date of possession will be calculated from the date of execution of commercial premises buyer's agreement. Therefore, the due date of handing over the possession shall be computed from 08.05.2010. Grace period of 6 months has been allowed to the respondent for the delay caused due to exigencies beyond control of respondent.

Accordingly, the due date of possession was 08.11.2013 and hence, the period of delay in delivery of possession is computed as 3 years 11 months 23 days till the date of offer of possession i.e. 31.10.2017. As there is no penalty clause in the agreement for the delay on the part of the respondent in giving possession after due date of possession as per agreement. The

MANDEEP BHUCKAL
HARERA GURUGRAM

terms of the agreement have been drafted mischievously by the respondent and are completely one sided. It has also been observed in para 181 of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*, wherein 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.”

As the possession of the unit was to be delivered by 08.11.2013, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso read with rule 15 of the Rules *ibid* to pay interest to the complainant, at the prescribed rate, for every month of delay from due date of possession i.e. 08.11.2013 till the date of offer of possession dated 31.10.2017.

SANDEEP BHUJAN
LEGAL ASSISTANT

FINDINGS OF THE AUTHORITY

28. 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.

Argument heard.

Brief facts that compel the complainants to approach this authority are that as per clause 15 of the Builder Buyer Agreement dated 8.5.2010 for unit No.FF-140, 1st Floor, in project " JMD Empire", Commercial Colony, Gurugram, possession was to be handed over to the complainants within a period of 3 years from the date of execution of builder buyer agreement i.e. 8.5.2010+ 6 months grace period which comes out to be 8.11.2013. Occupation certificate has been received by the respondent on 25.7.2017 and offered the possession to the complainants on 31.10.2017. Complainants have already paid Rs.28,36,349/- to the respondent against a total sale consideration of Rs.28,54,917/- As such, the complainants are

entitled for delayed possession charges at prescribed rate of interest i.e. 10.45% per annum w.e.f. 8.11.2013 to 31.10.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016. The respondent is directed to hand over the possession of the offered unit to the complainant within a period of one month.

DECISION AND DIRECTIONS OF THE AUTHORITY:

29. 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 issues the following directions in the interest of justice: -

- i. The respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.45% per annum w.e.f. 08.11.2013 to 31.10.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.
- ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order.


SANDEEP BHUCKAL

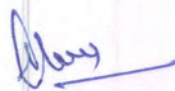
LEGAL ASSISTANT

- iii. The respondent is directed to hand over the possession of the offered unit to the complainant within a period of one month
- iv. Complainants are directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed period of possession.
- v. The promoter shall not charge anything from the complainants which is a not part of the commercial premises buyer's agreement.
- vi. Interest on the due payments from the complainants shall be charged at the prescribed rate of interest i.e. 10.45% by the promoter which is the same as is being granted to the complainants in case of delayed possession.

30. The order is pronounced.

31. 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 26.09.2019

SANDEEP BHUCKAL

LEGAL ASSISTANT