

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA
REAL ESTATE REGULATORY AUTHORITY, GURUGRAM**

**Complaint No.5343-2023
Date of Decision: 16.01.2025**

- 1. Rakēsh Mittal**
- 2. Mrs Nimmi Mittal**
R/O D-2021, Devinder Vihar,
Sector-56, Gurugram-122003

Complainants

Versus

**M/s. JMD Limited
Address:3rd Floor, JMD Regent Square
MG Road, Gurugram, Haryana-122001.**

Respondent

APPEARANCE

**For Complainant:
For Respondent**

**Mr. Gaurav Rawat, Advocate
Mr. Venkat Rao, Advocate**

ORDER

1. This is a complaint, filed by Rakesh Mittal and Nimmi Mittal (allottees) under section 31 read with section 71 of the Real Estate (Regulation and Development), Act 2016 (in brief Act of 2016) read with rule 36(1) of the Haryana Real Estate (Regulation and

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Development) (Amendment), Rules 2017 against M/s. JMD Limited (promoter).

2. According to complainants, they approached the respondent for booking of shop Unit CW-148 on first floor admeasuring 377.52 sq. ft in commercial Project "JMD Suburbio-1", Sector-67, village Badshahpur, Gurugram for a consideration of Rs. 27,98,128/- (basic sale price). They paid initial booking amount of Rs. 3,82,339/- through cheques dated 13.08.2010 and 09.09.2010.

3. That BBA was executed on 11.09.2010 between both the parties. As per clause 15 of BBA, unit was supposed to be delivered within 3 years from the date of sanction of revised building plan with extended period of 6 months.

4. That total cost of the said unit is Rs. 31,61,920/- inclusive parking, EDC, IDC, IFMS, Contingency, ECC, Air Condition Cost, HVAT and Taxes as per premises buyer's agreement. A total of Rs. 31,61,919/- (inclusive delay interest @ 18% (Rs.9026/-) are paid by them (complainants) i.e. 100% of cost of unit.

5. That the respondent illegally charged IFMS (interest free maintenance security @ Rs. 125 per sq. ft. amounting to Rs. 47,250/- and further imposed contingency charge @ Rs.70/- per sq. ft.

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amounting to Rs. 26,680/- which is extremely illegal, arbitrary and unilaterally.

6. That the issue of delayed delivery of possession of the unit has already been dealt by the Authority in a complaint No. 559/2020 filed by them (complainants) through order dated 13.09.2023, wherein the respondent was directed to pay the interest at the rate of 10.70% per annum for every month of delay on the amount paid by them (complainants) from the due date of possession i.e. 13.05.2017 till 03.02.2019 i.e. after expiry of 2 months from the date of offer of possession. They (complainants) are entitled to DPC till offer of possession. The Authority stated that compensation is to be decided by the Adjudicating Officer.

7. That the execution of said judgment is still pending before the Ld Adjudicating Authority, vide Execution Petition RERA-GRG-3713-2023. However, despite repeated directions, the respondent is deliberately delaying handing over of possession, causing further loss and financial strain on the complainants.

8. That the respondent has not yet handed over the final physical possession of the said unit to the complainants, while same (respondent) is charging advance maintenance charges from them (complainants), which is arbitrary and illegal.

9. That on various demands raised by the respondent, they (complainants) paid total of Rs. 31,61,920/- till 31.12.2018, which is more than the basic sale price of the unit.

10. That they (complainants) planned to start their business in 2013 but due to delay of possession of unit, they (complainants) faced financial losses and loss of business.

11. That to elude its responsibility of delayed possession, respondent offered possession of unit vide letter dated 03.12.20218 but the unit had incomplete interiors, there was no separate electricity meter, front road was incomplete, lift was not working, there was no work on floors, ceilings and on walls as were assured by the respondent.

12. Citing all this, the complainant sought following reliefs:-

i. To direct the respondent to provide the compensation of Rs.15,00,000/- for continuous harassment of the complainants due to non-compliance of the judgment dated 15.05.2023 of Hon'ble Authority.

ii. To direct the respondent to provide compensation of Rs. 20,00,000/- towards delay in handing over possession.

iii. To direct the respondent to pay compensation of Rs.10,00,000/- for imposing illegal charges on the complaint.

iv. To direct the respondent to provide the total rental loss of Rs. 15,51,123/- that has been incurred by the respondent, along with all other facilities, amenities and services as mentioned under the Brochure and Builder Buyer Agreement and assured at the time of booking.

v. To direct the respondent to provide the total loss on interest on rent to the tune of Rs. 5,35,945.21 that has been incurred to them (complainants).

vi. To direct the respondent to quash the maintenance charges amounting to Rs. 2,16,775.44 which is illegally imposed on the complainants without handing over the actual physical possession.

vii. To direct the respondent to provide the compensation of Rs. 5,00,000/- for causing financial, mental agony, harassment to the complainant.

viii. To provide the compensation of Rs. 5,00,000/- for the legal cost.

ix. To grant any other reliefs as may deem fit and proper in the facts and circumstances of the present case.

13. The respondent contested the complaint by filing a written reply. It is averred by the respondent: -

14. That only after being completely satisfied and agreed to the payment schedule, the complainants had proceeded to book a

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commercial unit-CW-148, First Floor (Unit) in the project for a total price of Rs. 31,61,920/-. The BBA was signed on 11.09.2010, by the complainants after the careful perusal of items and conditions.

15. That the complainants had earlier filed a complaint No.559 of 2020 before HARERA, Gurugram in which the complainant sought same reliefs as prayed here in this complaint.

16. That it (respondent) had applied for Occupancy Certificate for the Project "JMD Suburbia" and the Occupancy Certificate was issued on 18.10.2018. Thereafter, it (respondent) completed the final touch up and offered the possession to the complainant on 03.12.2018.

17. That it (respondent) has already offered the possession of the unit to the complainants on 03.12.2018, after obtaining the occupation certificate on 18.10.2018. Thereafter, the following reminders have been sent to the complainants to take possession and payment of dues through letters dated 08.03.2021, 06.08.2021, 18.08.2021, 25.02.2022, 24.12.2022, 27.12.2022. However, till date the complainants have failed to take over the possession of the unit.

18. That the complainants took the possession only on 19.12.2023 after a delay of approximately 5 years from the date of offer of possession. This fact has also been recorded in the order dated 13.04.2023.

19. That as per BBA dated 11.09.2010, the complainant was bound to make timely payment of dues in accordance with the demands raised by the respondent but the complainants violated clause 7 along with other allottees by not making the timely payment, as per demands raised by it (respondent). All this rendered the respondent unable to hand over possession, as per the promise, under the agreement.

20. That the complainants had opted for construction linked payment plan, against said commercial unit. Demands were raised only in accordance with said payment plan.

21. That learned Authority has also upheld that the delay was due to reasons beyond the control of the respondent. Therefore, there was no mental harassment or any losses caused to the complainants. For the delay in handing over of possession, the complainants have already duly been compensated by the Ld. Authority by order delay penalty charges. In this circumstance, the complainants are not entitled for any further compensation.

22. That the registration of the subject project was valid upto 30.12.2024 and as per the complainants' own submission, the possession of the subject unit was offered to them on 03.12.2018 i.e. well within the time submitted before the Ld. Authority. In this way, it



(respondent) has not committed any violation or caused any deliberate delay in the execution and timely handing over of the subject project.

23. In view of the above facts, respondent prayed that the present complaint is devoid of any merit and ought to be rejected with heavy costs.

24. I heard arguments advanced by Ld. Counsels for both of the parties and went through the documents placed on record.

25. There is no denial that the complainant booked a commercial unit, CW-148, First Floor, in the JMD Suburbia-I, Sector-67, Village Badshahpur, project for a total sale consideration price of Rs. 31,61,919/- in September 2010 being developed and marketed by the respondent. BBA between both of the parties was executed on 11.09.2010. The physical possession of subject unit was handed over to complainant on 19.12.2023. Complainants filed a complaint No. 599 in 2020, which was decided on 13.04.2023, in which the Authority found that the building plan was sanctioned on 13.11.2013 and due date of handing over the possession was 13.05.2017. The possession was offered to the complainant on 03.12.2018 i.e. after delay of 1 year 7 months on the basis of these factors, learned Authority granted DPC

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@ 10.70% per annum w.e.f. from due date of possession i.e. 13.05.2017 upto the date of offer of possession i.e. 03.12.2018.

26. Admittedly, the Authority did not allow compensation and left it to be decided by the Adjudicating Officer. Adjudicating Officer has been authorized to decide amount of compensation in view of sections 12, 14, 18 & 19 of the Act of 2016.

27. So far as prayer of complainant for compensation for financial loss, loss of appreciation and opportunity is concerned, as mentioned earlier on a separate complaint filed by present complainant, the Authority allowed Delay Possession Charges (DPC) @ 10.70% per annum for every month of delay on amount paid by the complainant from due date of possession i.e. 13.05.2017 upto date of offer of possession i.e. 03.12.2018. When complainant has already been allowed DPC, same is not entitled for compensation for financial loss or loss of appreciation and opportunity. It is apparent that a promoter is liable to pay delay possession compensation (DPC) to compensate the allottees for loss caused to him/her for not getting possession in agreed time, despite making payment of sale consideration.

28. According to promoter/respondent, same offered possession to the allottees/complainants on 03.12.2018 but despite said notice and several reminders the complainants did not take possession.

Ultimately, possession was taken by complainants on 19.12.2023 after delay of approximately five years from the date of offer of possession.

29. The fact that letter dated 03.12.2018 was received by the complainants, is not denied by learned counsel for latter but according to him, it was not valid offer of the possession. The promoter/respondent raised demand, which his client is liable to pay in the absence of which the promoter was not ready to hand over possession. Further, the unit was not complete at that time. There were several deficiencies.

30. Even letter stated to be offer of possession mentions about payment of dues. Learned counsel for complainants clarified that there were so many demands which his client is liable to pay, for example, maintenance charges and advance payment of maintenance. Admittedly, when possession was not handed over to the allottees, latter is not liable to pay maintenance charges. Similarly, the claim of the complainants that there several deficiencies in the unit when said letter dated 03.12.2018 was sent to his client, is not disputed on behalf of the respondent. Considering all this, said offer through letter dated 03.12.2018 even if made, is not valid offer of possession. It is also not denied that complainants paid entire sale consideration. In this way, the complainants are entitled, and respondent is liable to

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several reminders, the complainants did not take possession. Ultimately, possession was taken by complainants on 19.12.2023 after delay of approximately five years from the date of offer of possession.

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consideration. In this way, the complainants are entitled, and respondent is liable to pay compensation till actual handing over of the possession i.e. 19.12.2023.

31. As mentioned above, the present complainants have already been allowed by the Authority interest at rate of 10.70% per annum for every month of delay on the amount paid by them. In the absence of filing any appeal etc, said order has become final. In my opinion, interest ~~is~~^{is} at rate 10.70% per annum is appropriate amount to compensate the allottees i.e. complainants for not getting possession in time. Respondent is directed to pay interest at same rate i.e. 10.70% per annum for every month of delay on the amount paid by the complainants from 03.02.2019^{has} (Authority already allowed DPC from 13.05.2017 till 03.02.2019) till date of actual possession i.e. 19.12.2023.

32. Admittedly, the respondent offered possession of subject unit after delay, it caused mental harassment and agony to the complainants/allottees. The latter have claimed a compensation of Rs. 5,00,000/- in this regard. Keeping in view the fact that, respondent failed to deliver the possession, despite taking payment of Rs. 47,03,523.60, which is more than total sale consideration of

Rs.44,27,98.75, the complainants are allowed a sum of Rs. 2,00,000/- for mental agony and harassment in this regard.

33. The complainants have sought compensation of Rs. 5,00,000/- for legal costs. No certificate of advocate's fees is put on record. Even then, it is apparent that complainants were represented by a lawyer, during proceedings of this case, same are allowed a sum of Rs. 50,000/- as cost of litigation.

34. Complaint is thus disposed of. Respondent is directed to pay amounts of compensation within 30 days of this order, otherwise same will be liable to pay interest @ 10.50% per annum till the date of realization of amount.

35. File be consigned to the Registry.

(Rajender Kumar)

Adjudicating Officer

Haryana Real Estate Regulatory Authority,

Gurugram. 16.01.2025