

Complaint No. 2121 of 2019

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

Complaint no.- 2121 of 2019
Date of First hearing- 01.10.2019
Date of decision- 22.01.2020

1. Mr. Arun Kumar Khanna
 2. Mrs. Susham Bala
- Both R/o. M-28, South City- I,
Gurugram (Haryana) - 122001.

Complainants

Versus

M/s. JMD Limited
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 Sanjeev Sharma
None

**Advocate for the complainant
For the respondent**





ORDER

1. The present complaint has been filed by the complainant/allottee in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.
2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:-

S.No.	Heads	
1.	Project name and location	JMD Suburbio, Sector 67, Gurugram
2.	Project area	4.2375 acres
3.	Nature of project	Commercial complex
4.	RERA registered/ not registered	Unregistered
6.	DTCP license No. & validity status	291 of 2007 dated 31.12.2007 for 3,22,986 sq. ft. FSI Valid/renewed upto 30.12.2019
7.	Name of licensee	M/s. Ansal Properties and Infrastructure Ltd.
8.	Unit no., Tower no.	CW-219





9.	Carpet area	515.54 sq. ft. (super area)
11.	Date of execution of commercial premises buyer's agreement	29.08.2010 (Pg. 22 of the complaint)
12.	Payment plan	Construction linked payment plan
13.	Total sale consideration	Rs. 28,48,618/- (as per SOA dated 15.02.2019, Pg. 38 of the complaint)
14.	Total amount paid by the complainant	Rs. 25,93,343/- (as per SOA dated 15.02.2019, Pg. 38 of the complaint)
15.	Due date of delivery of possession as per agreement	28.02.2014 (Clause 15 - 3 years from the date of execution of agreement + 6 months grace period)
16.	Period of delay in handing over possession till offer of possession i.e. 03.12.2018	4 years, 9 months and 4 days.
17.	Status of project (ongoing/complete)	Occupation certificate received on 18.10.2018 for 4.237 acres
19.	Date of offer of possession, if any	03.12.2018 (Pg. 36 of the complaint)
20.	Reliefs sought (in specific terms)	<ul style="list-style-type: none">• Direct the respondent to provide copy of registered declaration with respect to common areas, parking area, etc. made by the respondent to the competent authorities;• Direct the respondent to pay the interest for the delayed period of handing over the possession;• Direct the respondent to recalculate the interest to be charged or already



	<p>charged at the same rate of interest at which he is ordered to pay to the allottee;</p> <ul style="list-style-type: none">• Direct the respondent not to charge any holding charges, interest on the pending payments at the time of offer of possession after the settlement of dues as per RERA Act;• Direct the respondent to refund the extra money charged on account of parking charges, club housing charges and such other charges be refunded back to the complainant alongwith interest;• Direct the respondent to comply with the drawings and approved plans sanctioned by the competent authority and inform the complainant above the non-compliance of promises made to the complainant, if any;• Direct the respondent to get the conveyance deed of common area and super areas be made in name of association of allottees.
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3. As per the commercial premises buyer's agreement in question vide clause no. 15 the possession was to be handed over within a period of 3 years plus grace period of six months which comes out to 28.02.2014. The relevant clause of the commercial premises buyer's agreement reads as under:

“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 execution of this agreement or further extended period of six (6) months after expiry of 36 months as agreed above except the force majeure circumstances.....’

4. Possession of the apartment/unit/plot has been offered on 03.12.2018. However, it is the allegation of the complainant that the possession has been offered by the respondent after a delay of almost 5 years, however no interest for the delayed period was offered by the respondent to the complainant despite repeated request of the complainant. Hence, this complaint filed by the complainants for the abovementioned reliefs.
5. On the date of hearing the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty. However, despite service of notice the respondent has failed to file reply to the complaint and also failed to put their appearance on the date of hearing. Therefore, the Authority left with no other option proceeded exparte against them.
6. 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.





7. The Authority on the basis of information and explanation and other submissions made and the documents filed by complainants is of considered view that there is no need of further hearing in the complaint.
8. The Act is to protect the rights of the stake-holders i.e. the promoter, allottee and the real estate agent as provided under the Act and also to balance their interest as per its provisions. The Authority is empowered to not only monitor the projects but also to ensure their timely compliance and in case where the projects are held up or stopped to take steps so that these are completed in time and interests of allottees are protected.
9. On consideration of the circumstances, the evidence and other record and submissions made by the complainants and based on the findings of the authority, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the commercial premises buyer's agreement dated 29.08.2010 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established.




10. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act :-

- (i) The respondent is duty bound to pay the interest at the prescribed rate i.e. 10.20% p.a. for every month of delay from the due date of possession i.e. 28.02.2014 till the offer of possession i.e. 03.12.2018 within a period of 90 days from the date of this order.
- (ii) The respondent is directed not to charge any additional amount from the complainants- allottees which is not the part of commercial premises buyer's agreement dated 29.08.2010.

11. The complaint is dispose of accordingly.

12. Case file be consigned to the registry.


Samir Kumar
(Member)


Subhash Chander Kush
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Date: -22.01.2020

Judgement uploaded on 29.01.2020

