



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 5.7.2018
Complaint No.	66/2018 case titled as Mr. Anuj Goyal versus M/s JMD Ltd.
Complainant	Mr. Anuj Goyal
Represented through	Complainant in person with Shri Premveer Singh Advocate.
Respondent	M/s JMD Ltd.
Respondent Represented through	Shri A.K.Singh, Advocate for the respondent.

Proceedings

The counsel for the complainant made a statement that he is not appearing before the Authority for compensation but for fulfilment of the obligations by the Promoter as per The Real Estate (Regulation & Development) Act, 2016 for which he will be giving application.

During the course of hearing, it came to the notice of the Authority that Occupation Certificate for commercial colony measuring 4.237 acres (Licence No.291 of 2007 dated 31.12.2007) was applied by the respondent on 15.6.2016 and also brought to the notice that so far no decision of the Occupation Certificate has been taken by the Director, Town & Country Planning, Panchkula. From the perusal of the report of STP available at page 14 (b) of the reply filed by the respondent, it is clear that the application was not completed in all respect. Such as fire OC was not included. There were certain fittings and fixtures which were incomplete. The Director, Town & Country Planning, Panchkula is hereby directed to take decision either to accept or refuse the Occupation Certificate within a period of 30 days. Copy of this order be sent to the Director, Town & Country Planning, Panchkula with a direction to file reply, if any, in this regard. Meanwhile keeping in view the provisions of The Real Estate (Regulation & Development) Act, 2016 and The Haryana Real Estate (Regulation & Development) Rules 2017, the registration with the RERA should have been applied by the promoter as till now the Occupation Certificate has not been issued in their favour. Incomplete application for Occupation Certificate cannot be treated as valid application in the eyes of law. Accordingly, the promoter is directed to give application for registration of the Project within 30 days without prejudice to the penalty, if any, to be imposed by the Authority if decided. The Commercial Premises Buyer's Agreement was executed on 10.1.2011. As per Clause 15 of the said agreement, the company was to give a commercial unit within three years from

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



HARERA
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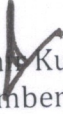
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM


हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

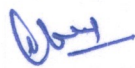
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the date of sanction of revised Building Plan. As stated by the counsel for the respondent, the revised plan was sanctioned on 13.11.2013. Accordingly, the possession of unit was to be given on 30.11.2016 as the promoter has failed to give possession of the unit in accordance with terms of agreement for sale. Accordingly, he is liable to fulfill the obligations as provided under Section 18 (1) of the Real Estate (Regulation & Development) Act, 2016. As this Project has already been nearly completed and OC has already been applied which is likely to be decided. Hence, it is not the stage that the allottee is allowed to withdraw from the Project. Now keeping in view that the allottee intends to continue with the Project, he shall be paid by the promoter interest for every month of delay till handing over of the possession at the prescribed rate. Dues, if any, outstanding against the allottee shall be paid by the respondent after making adjustment for the due interest within next 30 days. The interest shall be paid before 10th of every month. The promoter is directed to pay interest on every succeeded month. The matter still stands disposed of. If the Project is not registered, then a Show Cause Notice be issued regarding registration of the Project. The complainant made a request that in case the respondents are not in a position to handover possession by 31.12.2018 to the complainant, the allottee is at liberty to withdraw from the Project. The complaint is disposed of accordingly. Detail order will follow. File be consigned to the Registry.


Samir Kumar
(Member)


Dr. K.K. Khandelwal
(Chairman)
5.7.2018


Subhash Chander Kush
(Member)

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

Complaint No. : 66 of 2018
Date of Institution : 26.03.2018
Date of Decision : 05.07.2018

Mr. Anuj Goyal, R/o 29, Pushpanjali Ashiyana
Sikandra Agra-282007, U.P.

Complainant

Versus

M/s JMD Ltd.
JMD Regent Square, 3rd Floor, Main Mehrauli,
Gurgaon-122001

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Premveer Singh
Shri A.K. Singh

Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 26.03.2018 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 complainant (Mr. Anuj Goyal) against the promoter (M/s JMD Ltd.) on account of violation of clause 15 of the builder-buyer agreement for not giving possession on due date i.e. 30.11.2016 which is a committed obligation under



section 11 (4) (a) of the Act *ibid*. Hence, the complainant seeks cancellation of the allotment and thereafter, refund of the money paid by him along with interest as per the terms & conditions of buyer's agreement which was executed on 10.01.2011.

2. The particulars of the complaint are as under: -

1.	Name and location of the Project	JMD Suburbio Sector -67, Gurugram
2.	Registered/ Unregistered	Unregistered
3.	Flat/Apartment/Plot No./Unit No.	B-01, Ground Floor
4.	Booking amount paid by the buyer to the builder/promoter/company vide agreement	Rs. 17,25,140/-
5.	Total consideration amount as per agreement dated 10.01.2011	Rs. 49,16,136.68/-
6.	Total amount paid by the complainant up to date	Rs. 50,24,340/-
7.	Percentage of consideration amount	100%
8.	Date of delivery of possession from the date of builder as per buyer agreement	30.11.2016
9.	Delay for number of months/ years upto date	1 year 7 Months
10.	Cause of delay in delivery of possession	No Valid reason



3. As per the details provided above, which have been checked as per record of the case file. A builder buyer agreement is available on record for Unit as described above, according to which the possession of the aforesaid unit was to be delivered by 30th

Nov'2016 as per Clause 15 of BBA. The promoter has failed to deliver the possession till 05.07.2018 of the said unit to the complainants by the due date. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 14.06.2018. The case came up for hearing on 17.04.2018, 03.05.2018, 29.05.2018, 14.06.2018 & 05.07.2018. The respondent has filed his reply dated 19.06.2018. The respondent through its reply contended that the parties are bound by the terms and conditions of the agreement
5. During hearings, oral arguments have been advanced by both the parties in order to prove their contentions. As stated by the Counsel for the respondent, the revised building plan was sanctioned on 13.11.2013 and accordingly, the date of possession was 30-11-2016 for which they had also applied for occupation certificate on 15-06-2016 but the same has not been granted by the competent authority
6. As per agreement for sale, Clause 15, , the respondent was to give a commercial unit within 3 years from the date of sanction of the revised Building plan. The relevant clause regarding the possession of the said unit is as follows:



"15. THAT the possession of the said premises is proposed to be delivered by the Company to Unit Allottee(s) within three years from the date of sanction of revised Building Plan or further extended period of six months after the expiry of 36 months as agreed above except the force majeure circumstances."

7. Accordingly, the due date of possession was 30.11.2016. The terms of the builder buyer agreement have been drafted mischievously and are completely one sided as also held in para 181 of ***Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and Ors.*** (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."

8. As the possession of the flat was to be delivered by 30.11.2011 as per the clause referred above, the authority is of the view that the promoter has violated section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:



“11.4 The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”

9. The complainant made a submission before the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. Section 34(f) is reproduced below:

“34 (f) Function of Authority –

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.”

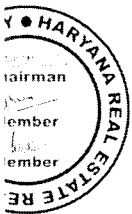


It has been requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:

“37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.”

10. The counsel for the respondent has stated that they will hand over the possession of the unit by 31.12.2018. Thus, it is held that the said project is already near completion & occupancy certificate has already been applied for the same which is likely to be decided. Hence, it is not the appropriate stage that the complainant should be allowed to withdraw from the project.
11. Considering the intention of the complainant to continue with the project, as per section 18(1)(b) of the ibid Act, it's an obligation of the promoter to pay interest for every month of delay till handing over the possession at such rate as may be prescribed to the complainant. Complainant reserves his right to seek compensation from the promoter for which he shall make



separate application to the adjudicating officer, if required.

Section 18(1) is reproduced below:

18 (1) Return of amount and compensation –

1. If the promoter fails to complete or is unable to give possession of an apartment, plot or building, -
 - (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
 - (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

He shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.



12. 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.

13. Thus, the authority exercising powers vested in it under section 37 of the Haryana Real Estate (Regulation and Development) Act, 2016 hereby, issue directions to the respondent to give interest to the complainant on the amount deposited by the complainant at the prescribed rate i.e. @ 10.45% p.a. for every month of delay from the due date of possession till the handing over the possession. The said interest shall be payable from the date the respondent has received the amount from the complainant and the same shall be payable within 45 days of the date of the order. The interest shall be paid before 10th of every month. In the eventuality, the respondent is not in position to handover possession by 31.12.2018 to the complainant, the complainant is at liberty to withdraw from the project.

14. Keeping in view the provisions of the Real Estate (Regulation & Development) Act, 2016 and the Haryana Real Estate (Regulation & Development) Rules 2017, the registration with the RERA should have been applied by the promoter since, till date, the Occupation Certificate has not been issued in their favour. Therefore, the authority takes Suo-motu cognizance that the project is registerable and has not been registered by the




promoters. and for that separate proceeding will be initiated against the respondent u/s 59 of the Act.

15. The order is pronounced.
16. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

