

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

Complaint No. : 1427 of 2018
Date of first hearing : 28.02.2019
Date of Decision : 28.02.2019

Smt. Chander Vati
R/o House no. 499, Sector-7,
Urban Estate, Gurugram

...Complainant

Versus

M/s JMD Limited
Office at: JMD Regent Square, 3rd Floor,
Main Mehrauli Gurugram Road,
Gurugram, Haryana

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Smt. Chander Vati Complainant in person
Shri Rajan Gupta Advocate for the complainant
Shri Ajit Singh Thakur Advocate for the respondent

ORDER

1. A complaint dated 31.10.2018 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 complainant Smt. Chander Vati, against the promoter M/s JMD Limited, on account of



violation of clause 15 of the commercial premises buyer's agreement executed on 29.11.2010 for unit described below in the project "JMD Suburbio" for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the commercial premises buyer's agreement has been executed on 29.11.2010, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"JMD Suburbio", Sector 67, Gurugram
2.	Nature of real estate project	Multi-storeyed commercial complex
3.	Unit no.	CW-123, 1 st floor
4.	Unit area	346.07 sq. ft.
5.	Project area	4.237 acres
6.	Registered/ not registered	Registered (312 of 2017)- JMD Suburbio-II, 1.857 acres



7.	Revised date of completion as per RERA registration certificate	31.12.2019
8.	DTCP license	291 dated 31.12.2007
9.	Date of occupation certificate	18.10.2018
10.	Date of offer of possession	03.12.2018
11.	Date of booking	28.11.2010 (as per receipt dated 29.11.2010, annexure-P/2, pg 36 of the complaint)
12.	Date of commercial premises buyer's agreement	29.11.2010
13.	Total consideration	BSP- Rs. 26,72,352.54/- (as per agreement, pg 14 of the complaint)
14.	Total amount paid by the complainant	Rs. 27,36,089.18/- (as per the complaint and as per the receipts attached with the paper book)
15.	Payment plan	Construction linked payment plan
16.	Date of delivery of possession	Clause 15- 3 years from date of execution of agreement, i.e. 29.11.2010 + 6 months grace period i.e. by 29.05.2014
17.	Delay of number of months/ years upto 03.12.2018	4 years 6 months



4. The details provided above have been checked on the basis of the record available in the case file which has been provided by the complainant and the respondent. A commercial premises buyer's agreement dated 29.11.2010 is available on

record for unit no. CW-123 on 1st floor, admeasuring super area of 346.07 sq. ft. approximately, according to which the possession of the aforesaid unit was to be delivered by 29.05.2014. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability as on date.

5. 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 28.02.2019. The reply has been filed on behalf of the respondent and the same has been perused.

Facts of the complaint

6. The complainant submitted that the respondent company had spent a huge amount of money for the launch of the said project and assured the interested buyers that it will be a dream project for the investors. Accordingly, believing the representations of the respondent, on 28.11.2010, the complainant booked a unit in the project named "JMD Suburbio", by paying an amount of Rs.3,80,000/- to the respondent. Accordingly, the complainant was allotted a unit bearing no. CW-123 on 1st floor, admeasuring super area of 346.07 sq. ft. for a basic sale price of Rs.26,72,352.54/-.



7. The complainant submitted that on 29.11.2010, a commercial premises buyer's agreement was executed, wherein as per clause 15, the possession should have been handed over within 3 years from the date of execution of the agreement, i.e. by 28.11.2013 and in case of delay, the respondent shall pay late possession charges.
8. The complainant submitted that she has already made a payment of Rs.27,36,089.18/-, i.e. more than the basic price but there is no work carried on at the site as per the terms of the agreement. It is submitted that the complainant visited the said property number of times but was shocked to see that there was a lot of work pending.
9. The complainant submitted that having gone through immense mental agony, stress and harassment, she has been constantly raising the issue of constant delay with the officials of the respondent but unfortunately no satisfactory response or concrete information or the reasons for the huge delay came forth from the respondent's end.
10. The complainant submitted that since the respondent failed to fulfil his promise to deliver the project by 28.11.2013, the complainant is no more interested in the project and wants refund of her money invested in the said project along with



interest @ 24% per annum from date of payment till realisation from respondent.

11. Issues to be determined

The relevant issues as per the complaint are:-

- I. Whether the complainant is entitled to recover Rs.27,36,089.18/- along with interest @ 24% per annum from date of payment till realisation from respondent?

12. Relief sought

- I. Direct the respondent to refund the sum of Rs. 27,36,089.18/- along with interest @ 24% per annum from the date of payment till realisation.

Respondent's reply

13. The respondent submitted that the respondent company, M/s. JMD Ltd. is one of India's most trusted real estate group. 'JMD Ltd.' is an 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 complexes, IT & SEZ & hospitality, in Delhi NCR and other parts of the country.



14. The respondent submitted that at the time of signing the said agreement, the respondent had clarified to the complainant of the facts that M/s. Anand Dham Realtors Pvt. Ltd. entered into a development agreement on 20.04.2007 with M/s. Ansal Properties & Infrastructure Ltd. (hereinafter referred to as "Ansal") and Ansal obtained license no. 291 dated 31.12.2007 from Director of Town and Country Planning, Haryana. At the time of execution of the commercial premises buyer agreement, the respondent clarified the fact to the complainant that out of the aforesaid sanctioned FSI of 3,22,986 sq. ft., an FSI of approximately 2,22,618 sq. ft. along with corresponding land i.e. front side of the said land has been agreed to be sold by Anand Dham and Ansal to the respondent company i.e. JMD Ltd.

15. The respondent submitted that the sanctioned building plans were also inspected and duly seen by the complainant at the time of execution of said agreement, while the respondent company had been advised by its prestigious customers for change in building plans as the area under the project is surrounded by the large chunk of residential townships and is best fit for commercial mall. Therefore, considering the above proposal from almost every customer and consent in



writing, respondent company has made through its architect a proposed building plan which is duly shown with marking of each unit to each one of its customers and is also signed and acknowledged by its customers including the present complainant and respondent company has applied for revision in building plans and developed the said project in accordance with the said proposed/revised building plans and got completed the project in time and also has received occupation certificate with the concerned authorities on 18.10.2018 and has already issued the letter regarding the offer of possession.

16. The respondent submitted that the complainant opted for construction linked plan for the payment of installments against the said commercial unit and demands were raised in accordance with the said plan. It is pertinent to mention here that respondent company had requested to the concerned authorities for sanction of revised building plans and same has been done on 13.11.2013 valid for the period 12.11.2018 and made all its efforts in order to complete the said project in terms of the said agreement.
17. The respondent submitted that the complainant has failed to show any terms/conditions under which she can claim



refund without cancellation or is entitled to interest. On the contrary, as per clauses 6 & 7 of the said agreement, time is of essence and in case of delay in payment, the earnest money shall stand forfeited. There is no term in the said agreement under which complainant can claim refund/interest. Under the said agreement, complainant was bound to give balance outstanding and take delivery of unit/shop after receipt of occupation certificate in terms of clause 16 of said agreement. The complainant breached fundamental terms of the said agreement. Neither in the complaint nor otherwise the complainant showed/mentioned any term of said agreement or any law under which she is entitled to refund/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 June 2016 and accordingly application for grant of occupation certificate was made to the concerned authorities and the same has been received 18.10.2018, 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. The respondent company has invested its own money & developed the said project/complex, the complainant is only entitled to make balance payment and



take possession of said unit as per the said agreement. It is submitted that the respondent issued letter of offer of possession to the complainant on 03.12.2018.

18. The respondent submitted that there is no allegation in the complaint nor 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, whereas complainant's case is that she was unable to make the balance payments in time as per payment plan and has taken personal loan which she wants to return to the loaner due to her needs. Admittedly, the complainant has breached the agreement/abandoned the agreement, therefore not entitled to any relief/refund/interest/compensation/damages etc. The complainant invested in the said property for investment purpose, for making money and when the property prices went down, the complainant stepped back from the agreement, putting the respondent company at loss, because on the assurance/booking of complainant, the respondent company has developed said unit and could not be sold to anyone else. The complainant is trying to gain out of her own wrong. It is submitted the said agreement is binding between the parties and the complainant has filed the above



mentioned case only in order to wriggle out of her obligations under the said agreement.

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

20. The respondent submitted that the present complaint is beyond the scope of this 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. 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.

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

22. 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. It is submitted 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 complainant,

reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

23. In respect of the **sole issue** to be determined, as per clause 15 of the commercial premises buyer's agreement dated 29.11.2010, possession was to be handed over to the complainant within a period of 36 months + 6 months grace period from the date of execution of agreement which comes out to be 29.05.2014. Further, the occupation certificate has been received on 18.10.2018 and possession has been offered to the complainant vide letter dated 03.12.2018. Thus, keeping in view the status of the project and the intervening circumstances stated above, the authority is of the considered view that refund cannot be allowed at this stage. However, on account of delay in offering possession, the complainant is entitled to delayed possession charges at the prescribed rate of 10.75% per annum from the due date of possession, i.e. 29.05.2014 to the date of offer of possession, i.e. 03.12.2018.

24. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.



The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

25. The complainant reserves her right to seek compensation from the promoter for which she shall make separate application to the adjudicating officer, if required.

Findings of the authority

26. **Jurisdiction of the authority-** The project “JMD Suburbio” is located in Sector 67, Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint regarding 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 complainants at a later stage.

27. By virtue of clause 15 of the agreement dated 29.11.2010, the due date of possession comes out to be 29.05.2014. The complainant so far had paid an amount of Rs.27,36,089/-. During the proceedings dated 28.02.2019, the counsel for the respondent had submitted that occupation certificate for the project in question was received on 18.10.2018 and possession of the unit in question was offered to the complainant on 03.12.2018. As such, keeping in view the status of the project and other intervening circumstances, the complainant is entitled to delayed possession charges on account of delay in handing over possession on or before the due date. The interest for every month of delay in handing over possession shall be given at the prescribed rate of 10.75% per annum as per the provisions of section 18(1) of the Act.

Decision and directions of the authority

28. The authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent:



- I. The respondent is directed to pay the interest at the prescribed rate i.e. 10.75% per annum for every month of delay on the amount paid by the complainant from due date of possession till the actual offer of possession.
 - II. The respondent is directed to pay interest accrued from 29.05.2014 (due date of possession) to 03.12.2018(date of offer of possession) on account of delay in handing over of possession to the complainant within 90 days from the date of issuance of this order.
 - III. The respondent is directed to refund the excess payment, if any paid by the complainant within a period of 30 days of the pronouncement of this order.
 - IV. As per registration certificate bearing number 312/2017, registration has been granted only for an area of 1.857 acres. Whereas, the total project area is 4.237 acres. This shows that the respondent has not got registered the balance area with the authority. Registry is directed to take immediate necessary action in the matter under section 59 of the Real Estate (Regulation and Development) Act, 2016.
29. The complaint is disposed of accordingly.
30. The order is pronounced.



31. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

(Samir Kumar)

Member

(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 28.02.2019

Judgement uploaded on 28.03.2019



HARERA
GURUGRAM

