

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

Complaint no. : 5116 of 2019
First date of hearing: 22.01.2020
Date of decision : 06.10.2020

Shri Nand Lal Aggarwal
R/o: A-5/B, SFS, Flat No. 279, Gate No. 8,
Paschim Vihar, New Delhi- 110063

Complainant

Versus

M/s JMD Ltd.
Address: 6, Devika Tower, UGF, Nehru
Place, New Delhi-110019.

Respondent

CORAM:

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

**Chairman
Member
Member**

APPEARANCE:

Shri Harshit Batra
Shri Ajit Singh Thakur along
with Shri K.B Thakur

Advocate for the complainant
Advocates for the respondent

ORDER

1. The present complaint dated 27.11.2019 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 allottees 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

| S. No. | Heads | Information |
|--------|--|---|
| 1. | Project name and location | "JMD Empire", Sector 62, Gurugram. |
| 2. | Project area | 2.23 acres |
| 3. | Nature of the project | Commercial complex |
| 4. | DTCP license no. | 270 of 2007 dated 04.12.2007 |
| | License valid/renewed upto | 03.12.2019 |
| | Name of licensee | Sh. Rati Ram |
| 5. | HRERA registered/ not registered | Registered vide no. 67 of 2017 dated 18.08.2017 |
| | HRERA registration valid up to | 31.12.2019 |
| 6. | Unit no. | GF-96, ground floor [Page 31A of complaint] |
| 7. | Unit measuring | 559 sq. ft. |
| 8. | Date of execution of commercial premises buyer's agreement | 05.04.2010 [Page 31 of complaint] |
| 9. | Payment plan | Construction linked payment plan [Page 40A of complaint] |

| | | |
|-----|--|---|
| 10. | Total consideration as per mentioned in commercial premises buyer's agreement (Page 31A of complaint and including EDC and interest free adjustable security) | Rs. 44,27,978.75/- |
| 11. | Total amount paid by the complainant as per receipt information [Page 42 to 55 of complaint] | Rs.47,03,523.60/- |
| 12. | Due date of delivery of possession as per clause 15 of the said agreement i.e. 3 years from the date of sanction of building plan from the competent authority plus 6 months grace period [Page 34 of complaint] | 30.09.2013 (building approved 30.03.2010) plans i.e. |
| 13. | Date of offer of possession | 31.10.2017 (Page no. 9 of reply) |
| 14. | Date of actual handing of possession to the complainant | 01.02.2018 [Page 70 of complaint] |
| 15. | Date of occupation certificate | 25.07.2017 (Page no. 7 of reply) |
| 16. | Delay in handing over possession till date of offer of possession i.e. 31.10.2017 | 4 years 1 month and 1 day |

3. As per clause 15 of the commercial premises buyer's agreement, the possession of the unit in question was to be handed over within a period of 3 years from the date of sanction of building plan (30.03.2010) plus 6 months grace period which comes out to be 30.09.2013. Clause 15 of the commercial premises buyer's agreement is reproduced below:

"15. 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 sanction of building plan from the competent authority or further mutually extended period of six (6) months after expiry of 36 months as agreed above except the force majeure circumstances..."

4. The possession of the subject apartment has been offered by the respondent to the complainant on 31.10.2017 i.e. after delay of 4 years 1 month and 1 day. The complainant seeks delay interest as per section 18 of the Act and further reserves his right to file a separate application for seeking compensation and/or cost of litigation from the adjudicating officer.
5. The complainant submitted that the parties executed the commercial premises buyer's agreement on 05.04.2010.
6. The complainant submitted that from 04.08.2013 to 18.02.2014 he has sent various E-mails to the respondent asking about the status of the project and delivery of possession. The complainant also requested the respondent to provide a copy of agreement which was executed in 2010. However, the respondent with malicious intention never replied to the mails of the complainant nor addressed his grievances.
7. The complainant submitted that the respondent received a license no. 2 of 2009 for setting up a commercial colony. As per clause 6 of that license the respondent was prohibited from

advertisement for sale of the units in the project until he receives sanctioned layout and building plans from the competent authority.

8. The complainant submitted that at the time of possession the respondent demanded Rs. 86,482.30/- more than what has been agreed in the builder buyer agreement in the name of air conditioning, ECC, increased area cost etc. along with corresponding GST on top of these cost and respondent also raised demand for increased area.
9. The complainant submitted that the respondent illegally demanded a sum of Rs. 65,144/- as VAT.
10. The complainant submitted that the respondent through letter dated 05.09.2019 demanded maintenance charges of Rs. 1,18,944/- without any justification.
11. The complainant submitted that the refundable security amount of Rs. 33,540/- has not been refunded till date.
12. This complaint inter-alia for the following relief:
 - i. To direct the respondent to provide prescribed rate of interest for the delay in handing over of possession from the date of respective deposits till its actual realisation.
 - ii. To direct the respondent to withdraw the unjustified and unlawful demands towards maintenance charges.

- iii. To direct the respondent to execute the registered sale deed of the unit as per section 11(4) (f) of the Act.
13. 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.
14. The respondent contests the complaint on the following grounds:
- (i) That the complainant through commercial premises buyer's agreement dated 5th April 2010 agreed to purchase a commercial unit/space/shop no. GF-96, first floor (area 559 sq. ft. approx.) in commercial complex at the rate of Rs. 7556.25/- per sq. ft. and accepted the terms and conditions of said agreement.
- (ii) That the complainant has inspected and duly seen the sanctioned building plans of the project.
- (iii) That the respondent has applied for occupation certificate to the competent authority vide letter dated 18.09.2015 and occupation certificate was issued by the competent authority on 25.07.2017 and further, it offered the possession vide letter dated 31.10.2017.
- (iv) That the Haryana Real Estate (Regulation & 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.

(v) 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.

15. The complainant through written submissions submitted the following:

(i) That he booked a shop admeasuring super area 559 Sq. Ft. bearing No. GF-96 for the total sale consideration of Rs. 42, 23,943.75/- (Rupees Forty-Two Lakh Twenty-Three Thousand Nine Hundred Forty-Three and Seventy-Five Paise only) in the JMD Empire project.

(ii) That the respondent issued a letter of offer of possession on 31.10.2017 and after that complainant continuously contacted respondent for the possession of the unit but the respondent sent the intimation of possession on 17.09.2020

(iii) That along with the offer of possession, which was in fact not the physical possession of the property, the respondent demanded an additional amount of Rs. 86,482.3/- more than

what has been agreed in the builder commercial premises buyer's agreement in the name of air conditioning cost, ECC, increased area cost etc. along with corresponding GST on top of these costs. That these additional amounts are due to the delayed conduct of the respondent and the complainant is not liable to pay the same.

(iv) That the respondent demanded an amount of Rs. 6,53,441/- and further demanded an amount of Rs. 1,18,944/- towards the maintenance charges vide letter dated 05.09.2019 from the complainant and these demands are against the terms of the agreement.

16. 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.
17. The authority, on the basis of information and other submissions made and the documents filed by both the parties, is of considered view that there is no need of further hearing in the complaint.
18. Arguments heard.
19. 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 complainant at a later stage.

20. On consideration of the circumstances, the documents and submissions made by the parties regarding contravention as per provisions of rule 28(2), the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 15 of the commercial premises buyer's agreement executed between the parties on 05.04.2010, possession of the booked unit was to be delivered within a period of 3 years plus 6 months grace period from the date of sanction of building plan from the competent authorities. The building plan of the said project was sanctioned by the competent authority on 30.03.2010. The grace period of 6 months is allowed to the respondent due to exigencies beyond the control of the respondent and the Director Haryana Fire Service, Panchkula has granted NOC for occupation of the above said building on 24.05.2017. Therefore, the due date of handing over possession comes out to be 30.09.2013. Since, the respondent has offered the possession of the subject unit to the complainant on 31.10.2017 i.e. after a delay of 4 years 1 month and 1 day. Accordingly, it is the failure of the promoter

to fulfil its obligations, responsibilities as per the agreement dated 05.04.2010 to hand over the possession within the stipulated period.

21. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. In this case, the respondent has offered the possession of the unit to the complainant on 31.10.2017. As the actual possession has been taken by the complainant on 01.02.2018 i.e. after a delay of approximately 4 months from the date of offer of possession and the delay is on the part of complainant himself. So, one cannot take advantage of his own fault and he has failed to prove that there was any delay in handing over of possession by the promoter. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 9.30% p.a. w.e.f. due date of possession i.e. 30.09.2013 upto the date of offer of possession i.e. 31.10.2017 as per section 18(1) of the Act read with rule 15 of Rules.

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

- (i) The respondent is directed to pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 30.09.2013 upto the date of offer of possession i.e. 31.10.2017. As the complainant has not taken possession within 2 months of offer of possession, accordingly, he shall be entitled for DPC till offer of possession.
- (ii) The respondent is duty bound to execute conveyance deed within a period of 3 months from the date of issuance of occupancy certificate as per section 17 (1) of the Act *ibid*.
- (iii) The respondent is directed to do the needful within one month. If there are any maintenance charges from the date of offer of possession, the same are declared invalid.
- (iv) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.
- (v) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- (vi) The respondent shall not charge anything from the complainant which is not part of the commercial premises buyer's agreement.

(vii) Interest on the due payments from the complainant shall be charged at the prescribed rate @ 9.30% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.

23. Complaint stands disposed of.
24. File be consigned to registry.


Samir Kumar
(Member)


Subhash Chander Kush
(Member)


Dr. K.K. Khandelwal
(Chairman)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.10.2020

JUDGEMENT UPLOADED ON 27.10.2020