HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 714 OF 2019

Ram Rattan Namdhari & anr. ....COMPLAINANT(S)

VERSUS

Jindal Realty Pvt. Ltd. ....RESPONDENT(S)

CORAM: Rajan Gupta **Chairman**

Dilbag Singh Sihag **Member**

Date of Hearing:26.07.2022

Hearing: 11TH

Present: -Mr. Jagan Nath Bhandari, Counsel for the complainant through VC

Mr. Ram Rattan Namdhari, Complainant through VC

Mr. Drupad Sangwan, Counsel for the respondent

ORDER (RAJAN GUPTA-CHAIRMAN)

1. Complainant had filed captioned complaint on 29.03.2019 seeking relief of possession alongwith delay interest. Notice was issued to respondent on 09.04.2019 for filing of reply. Respondent had filed his reply on 16.08.2019. Today is 11th hearing of this case. This case was heard at length on 27.02.2020

and 23.12.2020. Brief facts of the case were recorded in order dated 27.02.2020.

Said order is reproduced below for reference:-

"The complainant had bought unit no. F-145 measuring 1476 sq ft in respondent's project- Jindal Global City, Sonipat, by paying Rs 4,64,267/- as booking amount. Buyers agreement dated 23.01.2014 was executed between the parties for the said unit and in terms of the said agreement the possession was supposed to be delivered upto 23.01.2017. It has been alleged that the respondent offered possession on 16.06.2018 i.e. after delay of 1.5 years alongwith demand of Rs 7,34,273/-.

2. Today the representative of complainant states that the respondent has changed the area of booked unit from 1476 sq ft to 1531.46 sq ft without obtaining consent of the allottee. Further, he is impugning the additional demand raised by respondent of Rs 7,34,273/-alongwith offer of possession, out of which he specifically objected to the amount of Rs 1,77,930/-/- charged on account of increased area. He states that increase of 55.46 sq ft in the booked unit without any intimation to the allotee is not justified.

3. Respondent counsel has today filed his vakalatnama, which is taken on record. He prays for an adjournment on the ground that he has been engaged yesterday only. However, respondent has already filed his reply wherein regarding area it is mentioned that as per clause 8 (iii) and (iv) of the builder buyer agreement the area booked was tentative with +-25% alteration clause. It has been stated that the final area being offered to complainant is within the allowed permissible limit stipulated in the agreement.

4. After hearing both parties, the Authority observes that the complainant is aggrieved by the change in the area of his booked unit and seeks justification for the same. On the other hand, respondent instead of assisting the Authority has changed his counsel just a day before the hearing, such a conduct on part of respondent is not acceptable as the complainant who had

already paid more than 90% of basic sale price of the booked unit (paid Rs 44,15,997/- against Rs 45,06,293/-) is still waiting to have possession of his unit. So, cost of Rs 5,000/- payable to Authority and Rs 2,000/- payable to complainant is imposed on respondent.

5. The factual position of the matter reveals that the area of unit no. F-145 (first floor) has been increased from 1476 sq ft to 1531.46 sq ft. It is observed that the there is 3.8% increase in the booked area. Such changes are justified only if they have been done in accordance with the approved building plans. The respondent should furnish details of calculation of each component of the booked area showing details of increased area to the complainant so as to satisfy him. In case the complainant does not get satisfied with the said calculation then he shall fix a date with respondent for joint site visit. The respondent is directed to facilitate the said visit. He shall also provide copy of approved building plans and shall carry the measurement of area of booked unit in presence of complainant so as to satisfy with the alleged increased area. Both parties shall fix the date of site visit at their own level. The said site visit shall take place within time of one month after the aforesaid detailed calculation has been provided by respondent to complainant.

6. With these directions, the matter is adjourned to **28.04.2020."**

2. Thereafter, vide order dated 23.12.2020 issues involved in this case were adjudicated by this Authority and case was referred to Ld. Adjudicating Officer of this Authority being appointed as Arbitrator for settlement on minor issue of modification of layout plan of unit with consent of both parties. Order dated 23.12.2020 is reproduced below for reference:-

"Vide order dated 18.08.2020, both parties were directed to make a joint visit at the project site on 05.09.2020 in

order to resolve the issue of increase in area from 1476 sq ft to 1531.46 sq ft of the booked unit. Further, respondent was directed to carry out measurement of area of booked unit in the presence of complainant so as to satisfy with the alleged increased area. After said site visit the complainant has stated that he is satisfied with the issue of increase in area. But now another grievance related to change of layout plan as well as building plans has been raised by complainant specifically pointing out that area of master bedroom stands reduced.

The Authority after hearing submissions of both parties vide order dated 08.10.2020 had directed both parties to amicably settle the matter. Relevant part of order is reproduced below for reference: -

"After hearing submissions of both parties, Authority observed that complainant is satisfied with the issue of increase in area but is now aggrieved of change in layout plan and building plan. Factual position reveals that booked unit stands completed and offer of possession has already been made by respondent on 04.06.2018 after receiving occupation certificate on 30.05.2018. Besides, complainant is interested in having possession of the booked unit alongwith delay interest. Keeping in view the above said factual position Authority, prima facie, is of view that unit stands completed as possession has already been offered and occupation certificate has also been received. The issue of objection is minor and seems to be settled by both parties. So, both parties are advised to settle the matter amicably outside of the court as there are chances for amicable settlement, otherwise matter will be adjudicated on next date of hearing on merits."

Today, learned counsels appearing on behalf of both parties has stated that matter has not been amicably settled between the parties. But the fact remains that complainant is still interested in having possession of the unit. In the prevailing circumstances it has been decided that the present case be referred to Learned Adjudicating Officer of this Authority being appointed as Arbitrator in this case, so as to provide last

opportunity to parties for settlement. Both parties consented to act accordingly so they are directed to appear before appointed Arbitrator on 12.01.2020 at 11 am alongwith relevant documents.

In case, both parties again fail to settle the matter before appointed Arbitrator then the present case will be deemed to be a fit case for refund of paid amount alongwith interest. Adjourned to **12.01.2021** to appear before Adjudicating Officer.

3. Thereafter, Ld. Adjudicating Officer being an Arbitrator had passed the arbitral award dated 12.01.2021 with an observation mentioned below:-

> Since, neither any offer of settlement has been made by the complainant nor the offer made by respondent has been accepted by the complainant, he is simply insisting on for change of layout and finally expressed his desire to quit from the project, the matter could not be settled.

4. Meanwhile, respondent feeling aggrieved by finding of the Authority in order dated 23.12.2020 reproduced above that in case both parties failed to settle the matter before appointed arbitrator then the present case will be deemed to be a fit case for refund of paid amount alongwith interest, had approached Hon'ble Real Estate Appellate Tribunal by filing an Appeal no. 09/2021 titled as Jindal Reality Limited vs HARERA, Panchkula and Ram Ratan Namdhari which was decided on 04.02.2021 with an observation that:-

> "It is obvious that in view of the statement made by the respondent (Ram Rattan Namdhari), the Ld. Authority will

consider the claim for refund after the complaint is amended by the respondent-allotee in accordance with law."

5. Accordingly, complainant had filed amended complaint in order to amend the relief sought from possession to refund of paid amount. Upon receipt of notice alongwith copy of amended complaint, the respondent had filed his amended reply on 10.05.2022. Copy of same has already been supplied to complainant. Case is today fixed for arguments.

6. Brief facts as averred by ld. counsel for complainants are that the unit no. F-145 having area of 1476 sq ft situated in respondent's project-Jindal Global City, Sonipat was allotted to complainants vide allotment letter dated 19.06.2013 annexed as Annexure A-1. Thereafter, builder buyer agreement was executed between the parties on 23.01.2014 and in terms of clause 28 of it, the possession was to be delivered wthin 36 months i.e. by 23.01.2017. An amount of Rs 44,15,997/- has been paid against basic sale price of Rs 45,06,293/-. The fact of basic sale price of Rs. 19,69,329/- having been agreed between the parties is supported by the Builder Buyer Agreement executed between the parties which has been annexed as Annexure A-3 to the complaint. In support of the averment that said amount of Rs. 44,15,997/- has been paid, complainants have annexed receipts issued by the respondent to them as Annexure A-4.

7. Further it has been alleged by complainants that respondent had issued offer of possession of booked unit with increased area i.e. 1531.46 sq ft on

16.06.2018 (correct dated is 04.06.2018) alongwith additional demand of Rs 7,32,473/- out of which complainants are disputing GST charges and maintenance charges. Said offer was not been accepted by the complainants for the reason that design of booked unit has been changed and said new design is not as per requirements and liking of the complainants as entire concept of having spacious master bedroom has been ruined by toilets which were earlier outside the rooms are now has been moved inside, and further a store room has also been carved out, therefore entire concept of use of master bedroom and spacious flat due to which complainants had bought this unit has been rendered infructuous. Besides this, it has been alleged there has been delay caused of around 2 years in offering possession without payment of delay interest. For these reasons, the complainants are not interested in taking possession of unit and are seeking relief of refund of paid amount alongwith interest.

8. On the other hand, respondent in his written reply has stated that the complaint has been drafted on incorrect interpretation of Buyer's agreement as there is a clause of the Force Majeure conditions in the agreement itself. The relevant part of the clause of agreement was read out by ld. counsel and the same is reproduced below for ready reference: -

> "Subject to Force Majeure as defined herein and subject to timely grant of all approvals , permissions, NOCs etc. and further subject to the allottee having complied with all his /her /its obligations under the terms and conditions of this agreement, and the allottee not being in default under any part of this agreement including but not limited to

timely payment of the total sale consideration , stamp duty and other charges /fees/ taxes/ levies and also subject to the allottee having complied with all the formalities or documentation as prescribed by the developer, the developer proposes to hand over the possession of the unit to the allottees within a period of 30 months from the date of execution of this agreement with further grace period of 180 days. "

"Clause – 20 Force Majeure - In the event of happening of any unforeseen circumstances such as Act of God, fire, flood, earthquake, explosion, war, riot, terrorist acts, sabotage, inability to procure or general shortage of energy, labour, equipment, facilities, materials or supplies, failure of transportation, strikes, lock outs, action of labour unions, court case/decree/stay, statutory/government permissions, approvals or any other causes (whether similar or dissimilar to the foregoing) which are beyond the control of the development, the developer shall not be held responsible or liable for not performing any of their obligations or undertaking in a timely manner as stipulated in this Agreement. In case of happing of any of the circumstances, the Developer shall be entitled to reasonable extension of time for performing their part of obligation as stipulated in this Agreement."

9. It has been argued that the delay in delivery of possession was not deliberate rather it was due to the amendments carried out by the Department of Town and Country Planning in sectoral plan without obtaining any consent of the promoters. They had raised their objections against amendments of sectoral plan vide representation dated 04.11.2011 before the concerned authority but in vain. Finally, the issue of amendment was decided by the DTCP on 09.02.2015. Therefore, there was no intentional delay on promoter's part.

10. Ld. counsel for the respondent also argued that prior to the arbitrary revision of sectoral plan by the State government department, they had obtained approval of layout plan on 08.04.2010 and zoning plan on 21.09.2011 of their

project in question. Further, respondent have already obtained Part Completion Certificate on 10.03.2016. As far as unit of complainants in question is concerned, it has been stated that respondent after completing construction work of the unit had applied for grant of occupation certificate on 16.01.2018 which was granted on 30.05.2018. Thereafter, offer of possession of unit complete in all respect was made to complainants on 04.06.2018. Copy of said offer is annexed as Annexure A-4 of reply, but the complainants did not come forward to take possession after paying outstanding amount of Rs 11,26,954/-. Several notices dated 24.07.2018, 21.07.2018, 08.09.2018, 11.09.2018,18.02.2019 and 13.05.2019 were issued to complainants for making payment but in vain.

11. Further it has been submitted that relief of refund sought by complainants on the ground that design of the unit has got changed is not tenable as respondent has duly completed the unit in all respect after investing whole paid amount of complainants. Further, final area after increase i.e. from 1476 sq ft to 1531 sq ft is well within the permissible limits of the buyer agreement and respondent had full rights to slightly alter the design of the floor for attaining maximum efficacy of the layout by virtue of clause 24 and 25 of BBA. It has also been stated that project in question is having 392 floors out of which 296 floors have been handed over, fully inhabited whether on rental or by end users and conveyance deeds executed. So, the amount of complainants-allotees as well as non-complainants allottees has been duly invested in the

development of project itself. Regarding issue of GST and maintenance charges, it has been said that both charges were duly asked as per terms of the BBA.

12. After hearing submissions of both parties and perusing relevant record, Authority observes and orders as follows:

(i) Respondent admits allotment of unit no. F-145 and execution of builder buyer agreement dated 23.01.2014. There is no denial to the fact of Rs. 44,15,997/- having been paid by complainants to respondent. Payment of this amount is adequately proved from receipts and statement of account attached as Annexure R-4 of reply.

(ii) Complainants initially were aggrieved on account of increase in area from 1476 sq ft to 1531.46 sq ft, but said issues already stands settled between both parties as complainants are satisfied with the increased area as is evident from order dated 23.12.2020 passed by Authority. Relevant part of said order is reprocured below:-

"Vide order dated 18.08.2020, both parties were directed to make a joint visit at the project site on 05.09.2020 in order to resolve the issue of increase in area from 1476 sq ft to 1531.46 sq ft of the booked unit. Further, respondent was directed to carry out measurement of area of booked unit in the presence of complainant so as to satisfy with the alleged increased area. After said site visit the complainant has stated that he is satisfied with the issue of

increase in area. But now another grievance related to change of layout plan as well as building plans has been raised by complainant specifically pointing out that area of master bedroom stands reduced."

(iii) Coming to the change in design of the unit in question, factual position reveals that respondent has deviated from the earlier proposed design and has shifted the bathrooms inside the two master bedrooms and has further added a store room. Explanation of the respondent is that said change was done in accordance with approved plans and toilets are constructed inside of room due to change in location of shafts. However, because of said changes made in the interior design of the flat, the purpose of the complainants for booking the flat has been allegedly rendered infructuous, because complainants wished to own a spacious flat with an open space and larger master bedroom, but now effective available area has been reduced because of shifting of toilets inside. Therefore, complainants submitted before Authority that the flat in question is not in accordance with the plan of their liking and not suitable for them and thus they wish to withdraw from the project. Further possession of the flat has already been delayed by around two years that too without offering any delay interest.

In this regard, the Authority is of view that admittedly project has been completed by the respondent and possession of unit has also been offered on 04.06.2018 after receipt of occupation certificate on 30.05.2018. Authority observes that it has to strike a balance between the interest of the allotees and that of the project. Therefore, when the project is completed, it will be deemed that promoter has invested the money received from the allotees on the project. Therefore, refund in such situation is not justified. Further, plea of complainants that refund of paid amount is justified as property in question is now not as per their liking due to change in design is also not acceptable for the reason that minor changes in design of unit are duly permitted by virtue of clause 24 and 25 of BBA. Further, it is a completed project wherein occupation certificate has already been obtained on 30.05.2018 after completing the construction work in accordance with approved plans. The builder is under obligation to invest the money of allotee towards construction of unit only which has been done in this case. So, prayer of refund of paid amount on this ground also is not justified.

(iv) As per provision and terms of BBA dated 23.01.2014 executed between the parties, deemed date of possession comes out

to 23.01.2017 and in between there were force majeure conditions prevailing for the period ranging from 04.11.2011 to 09.02.2015 due to revision of sectoral plan by DTCP. Said plea of force majeure has already been accepted in large number of complaints earlier decided by this Authority bearing no. 569/2018 and 1048/2018 pertaining to the project of respondent. Accordingly, reckoning 3 years from date of finalisation of sectoral plan on 09.02.2015 the deemed date of possession works out to 09.02.2018. In this case a valid offer of possession of unit was offered to complainants on 04.06.2018 after completion of construction work and receipt of occupation certificate dated 30.05.2018. Accordingly, the complainants are entitled to delay interest for the period ranging from deemed date of possession upto the date of valid offer of possession i.e. 09.02.2018 to 04.06.2018 in terms of Rule 15 of HRERA Rules, SBI MCLR+2% (9.80%).

It is borne out from record that the respondent had collected Rs. 11,25,877/- from the complainants in the year 2013, which amount he wasn't entitled to collect for the reason that he wasn't carrying out any work during this period on account of force majeure situation as earlier discussed. Considering this aspect of the case, this Authority in the earlier decided Complaint case no. 1048

of 2018 had directed the respondent to pay interest @ 9 percent p.a. to the allottees on the amount wrongly collected during force majeure period. On the same parity, the complainant herein is also allowed interest @ 9 percent p.a. on Rs. 11,25,877/- from the date of its payment to the date of finalisation of sectoral plans, which is 09.02.2015.

Respondent in his latest statement of receivables and payables has calculated delay interest @9.8% to the tune of Rs 1,29,218/- and interest on amount received during force majeure @9% to the tune of Rs 1,39,862/-. On verification said amount is found correct. Respondent is liable to pay in total Rs 2,69,080/- to the complainants.

(v) Now coming to the issue concerning GST. The respondent as per terms of BBA was required to deliver possession upto 23.01.2017. The complainant's plea is that he is not liable to pay GST as law of GST was not applicable on deemed date of possession. The respondent's plea on the other hand is that he was precluded from completing protect on time because concerned department had not finalised the sectoral plan and period from 04.11.2011 to 09.02.2015, during which department was in process

of revising sectoral plans, had caused force majeure condition for him to undertake the construction work.

The Authority in earlier complaints of the same project has ruled that force majeure conditions existed for respondent company from 04.11.2011 to 09.02.2015 due to revision of sectoral plan. So, the deemed date of possession in present case has to be reckoned by adding the force majeure period from 04.11.2011 to 09.02.2015. Thus calculated, the deemed date of possession works out to 09.02.2018. The law of GST which came into force in year 2017 thus became applicable to present case. However, considering that liability of GST has accrued due to force majeure condition, the Authority holds that both parties are liable to bear the cost of GST in equal proportion. Therefore, complainant shall pay only 50% of GST charges and remaining 50% shall be borne by respondent.

(vi) Regarding maintenance charges it has been argued by complainant's counsel that possession of the unit has not been taken by complainants so they are not labile to pay these charges. It is observed that obligation/duty is cast upon respondent to complete the project as well as to maintain the project irrespective of fact that whether possession has been taken by allottees or not. So,

complainants are liable to pay maintenance charges from the date of valid offer of possession..

(vii) In respect of statement of receivables and payables issued by respondent it is observed that respondent has charged holding charges to the tune of Rs 3,54,188/-. Regarding holding charges, it is observed that present complaint was filed on 29.03.2019 seeking relief of possession of booked unit for the reason that respondent has offered possession of booked unit on 04.06.2018 without offering any delay interest and there was issue of increase in area 1476 sq ft to 1531 sq ft. At that time plea of respondent was that they had already offered valid offer of possession on 04.06.2018 after receipt of occupation certificate on 30.05.2018. Regarding increase in area it was submitted that allotted area is tentative and subject to alteration upto +-15% and alleged increased area is duly covered under said limit as prescribed in clause 8 of BBA. Complainants were having grievances against said offer of possession and for adjudication of same they had approached this Authority in year 2019, since then the issues/dispute involved between the parties was pending adjudication before this Authority. Equity demands that respondent cannot charge holding charges for such period.

(viii) Respondent is directed to issue fresh statement of accounts of receivables and payables in terms of principles laid down in this order to the complainants within 45 days of uploading of this order and complainants are also directed to take possession of unit after making payment of balance dues within 45 days of receipt of said statement of accounts.

13. **Disposed of** in above terms. File be consigned to record room after uploading order on the website of the Authority.

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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]

Haryana Real Estate Regulatory Authority • Panchkula •
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