



Complaint no.808 of 2020

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Reopened for deciding rectification application u/s 39 of RERA Act, 2016

COMPLAINT NO. 808 OF 2020

Indu Sangwan

....COMPLAINANT

VERSUS

Jindal Realty Limited

....RESPONDENT

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Date of Hearing: 12.10.2023

Hearing: 2nd

Present: - Mr. Harsh Mehta, Id counsel for complainant through VC.

Mr. Drupad Sangwan, Id counsel for respondent through VC.

ORDER (NADIM AKHTAR- MEMBER)

1. Learned counsel for the complainant filed an application on 24.07.2023 praying for the rectification of the disposal order dated 17.05.2023 passed in captioned complaint, under section 39 of Real Estate (Regulation and Development) Act, 2016.
2. Vide said application, Ld counsel for complainant submitted that the Hon'ble Authority has disposed of the complaint vide order dated 17.05.2023 in terms of principles laid down in complaint no. 569/2018 Rohan Malwal v. Jindal Realty and complaint no. 1048/2018 Nirmala Chaudhary & Parul Chaudhary v. Jindal realty Pvt.Ltd.
3. Further that while calculating the amount which the complainant would be entitled, the payments made to the opposite side before force majeure period have been inadvertently excluded by the Authority. That as per facts of complaint no.1048/2018 Nirmala Chaudhary & Parul Chaudhary v. Jindal realty Pvt. Ltd, no amount was paid prior to the force majeure period. The observation of the Hon'ble Authority in the said case was that the opposite party is liable to pay interest on delay in delivery of possession despite the period of force majeure. Hence as per the principles laid down by this Hon'ble Authority, complainant is also entitled to interest on the entire amount paid prior to 09.02.2015. The amount and interest tabulated by the complainant is as follows:



Amount Paid	Date of payment	Interest accrued till 09.02.2015
₹3,45,000/-	14.01.2010	₹1,57,377/-
₹3,44,750/-	21.02.2011	₹1,23,055/-
₹1,54,913/-	05.03.2011	₹54,760/-
₹17,761/-	11.04.2011	₹5,994/-
₹239/-	11.04.2011	₹81/-
Total: ₹8,62,663/-		₹3,41,267/-

4. It is prayed that present application of review/rectification may be allowed by incorporating the amount calculated in table of the application.
5. Today, during course of hearing, complainant counsel reiterated the facts of above said application dated 24.07.2023.
6. Authority is of the view that order dated 17.05.2023, was passed after duly taking into consideration the facts and documents placed on record by both the parties. Vide said order complainant was awarded delay interest from 09.02.2018(deemed date of possession) to 30.06.2018(date on which a valid offer was offered to complainant after obtaining occupation certificate dated 21.06.2018) and interest @9% on an amount



₹2,80,973/- from date of payment to the date of finalization of sectoral plan and refund of excess amount of CGST and SGST as same was liable to be borne by both parties in equal share. Relevant para of aforesaid order is reproduced herein:

“27. In view of aforesaid observations and reasoning, the Authority hereby concludes that the complainant is entitled for the delay interest from 09.02.2018 (deemed date of possession) to 30.06.2018 (date on which a valid offer was sent to complainant after obtaining occupation certificate dated 21.06.2018) and Interest @ 9% on amount of Rs 2,80,973/- from date of payment to the date of finalization of sectoral plan and refund of excess amount of CGST and SGST as same was liable to be borne by both parties in equal share.

28. Authority has got calculated the interest on total paid amount from the deemed date of possession till the date of valid offer of possession at the rate of 10.70% till and said amount works out to ₹ 1,03,081/- as per detail given in the table below:

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 30.06.2018
1.	₹24,76,277/-amount paid till 09.02.2018 as	09.02.2018	₹1,03,081/-



	per statement of account attached at page no. 107 of written statement.		
			Total=1,03,081/-

29. Authority has also got calculated the interest, on amount paid of Rs 2,80,973/- during the force majeure period from the date of respective payment till finalisation of sectoral plan (09.02.2015) @9% in terms of principles laid down by this Authority. in complaint no. 569/2018 and 1048/2018 said amount works out to 9250/- as per detail given in the table below:

Sr.no	Principal Amount	Date of payment	Interest accrued till 09.02.2015
1.	2720/-	22.08.2012	₹605/-
2.	278253/-	07.10.2014	₹8645/-
	Total=2,80,973/-		Total=₹9250/-

7. Furthermore, the issue of this application is that interest on the amount collected prior to force majeure period be also granted to the



complainant. This issue had already been decided by this Hon'ble Authority vide order dated 25.03.2021, in **complaint no. 1672 of 2019** titled **Sunita Singh versus Jindal Realty Pvt. Ltd** wherein Hon'ble Authority observed that the amount paid by the complainant has been admitted by the respondent and has been utilized for development and construction of the project. Thus, amount collected by the respondent had been utilized for development of project and respondent has fulfilled his duty by offering possession of the unit to the allottee after completing construction. Regarding amount collected during force majeure period, respondent is already liable to pay interest @9%. Relevant para of said order is reproduced herein:

"9. After, considering averments and written submissions of both parties, the Authority observes that respondent has already been directed to pay interest 9% on the amount collected during force majeure period. On the other hand, it is an admitted fact that respondent has delivered possession after completion of unit so the construction portion of the project can be carried out only after receiving necessary approvals and sanctions from government authorities/department. It is not the case where the respondent has not fulfilled his duty and has not carried out any construction work after taking necessary approvals. The amount paid by the complainant has been admitted by the respondent and has been utilized for development and construction of the project. In wholesome, it can be concluded that the respondent has utilized the amount collected from his



allotees for development of the project and so fulfilled his duty by offering possession of the units to the allottees after completing construction portion. Regarding unjustifiable act of collecting amount during force majeure period he is already liable to pay interest @9%."

8. Therefore, relying on the abovementioned judgment, Authority observes that interest on the amount paid by the complainant prior to 09.02.2015 cannot be granted.
9. Furthermore, the proceedings before Authority are summary proceedings and the Authority following the principle of natural justice passed the order while considering arguments of both the parties.
10. Authority under section 39 of the RERA Act, 2016 is only mandated to rectify only clerical mistakes apparent on the face of record. The RERA Act, 2016 does not entrust the power of review of the order on the Authority.
11. In fact the proviso 2 to section 39, categorically provides that the Authority "shall not" while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of the Act.
12. For the above stated reasons, the present application for rectification of the final order dated 17.05.2023 deserves to be rejected and the same is **hereby dismissed.**



File be consigned to record room after uploading of this order on the website of the Authority.



.....
DR. GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]