



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1946 of 2022
Date of filing:	01.09.2022
Date of first hearing:	03.11.2022
Date of decision:	09.11.2023

Sudhkar Mittal, S/o Sh. Satpal Mittal, R/o H. No. 1534,
Sector-9, Karnal (Haryana)- 132001

....COMPLAINANT

VERSUS

M/s J D Universal Infra Ltd.
through its Managing Directors, regd. office at 35,
Basement, Community Center, Vasant Vihar,
Delhi-110057

....RESPONDENT

CORAM: **Dr. Geeta Rathee Singh** **Member**
Nadim Akhtar **Member**

Present: Adv. Akshat Mittal, counsel for complainant.
None for the respondent.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by the complainant on 01.09.2022 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	JAY DEE GREENS, Sector 33-P, in and around Village Phusgarh, District Karnal, Haryana
2.	RERA registered/not registered	Un- Registered
3.	Plot no.	56
4.	Unit area	344 sq. yd.(approx.)
5.	Date of Agreement	30.12.2011



6.	Due date of possession	As per clause 12 of the agreement, "the company shall endeavour to give possession of the plot to the allottee within a reasonable period subject to force majeure circumstances and reasons beyond the control of the company, on receipt of all instalments and all other charges applicable on the plot." As per assurances of the respondent company asserted by the complainant in his complaint, the possession of the plot was to be offered within a period of 24 months from the booking (01.04.2011) i.e. latest by 01.04.2013 .
7.	Basic sales consideration	₹35,77,600/- (Rs.10,400/- per sq. yard for 344 sq yards.)
8.	Amount paid by complainants	₹19,92,000/-
9.	Demand letter/call letter for possession	07.07.2015 without issuance of OC
10.	Offer of possession	No valid offer made.

B. FACTS OF THE COMPLAINT

3. That the respondent floated a scheme for the development of the residential colony to be constructed and developed on the land situated in the revenue estates of Karnal, Haryana under the name and style of "Jay Dee Greens" to be situated in Karnal, being developed and promoted by respondent. The complainant entered into the booking of the plot

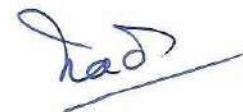


measuring 344 sq. yards at the basic rate of Rs. 10,400/- per sq. yard on 01.04.2011. The plot was allotted at the same rate for a basic sale price of Rs. 35,77,600/-.

4. That in pursuance of allotment, the total payment of Rs.19,92,000/- was made by the complainant in favour of the respondent in the following manner: -

Sr. no.	Receipt no.	Receipt date	Amount (Rs.)	Cheque no.	Cheque date
1.	1018	03.01.2012	1,01,000/- 4,00,000/- 12,91,000/-	533446 400248 Cash	-
2.	1214	21.09.2014	2,00,000/-	DD no. 732032	21.09.2014
	Total		19,92,000/-		

5. That the complainant submits that the respondent has clearly violated the provisions as enumerated under section 13 of the Act by accepting a sum of more than 10% of the total cost of the apartment in question without first entering into a proper written agreement and registration of the same.
6. That plot buyer agreement was executed between the parties on 30.12.2011. As per the assurances of the respondent company to the complainant, the possession of the plot in question was to be offered within a period of 24 months from the booking (01.04.2011), i.e., latest by 01.04.2013. However, the plot buyer agreement (hereinafter referred to as 'The Agreement' for brevity) inter-se the parties failed to mention a



specific time period for the offer of possession, as against the assurances of 24 months from the booking. The relevant provision of the said agreement regarding possession is being reproduced herein:-

"12. The company shall endeavour to give the possession of the plot to the allottee within a reasonable period subject to force majeure circumstances and reasons beyond the control of the company, on receipt of all instalments and all other charges applicable on the plot. The allottee shall not be entitled to any compensation on the grounds of delay in possession due to reasons mentioned herein above."

7. That as per the observation of the **Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr., 3 years** has been taken to be reasonable time to hand over possession to the allottee. Thus, the respondent was duty bound to offer possession to the complainant latest within 3 years of the booking (01.04.2011), i.e. latest by 01.04.2014, nevertheless the respondent company has miserably failed to deliver the possession within the said timeframe. Respondents have failed to deliver possession of the plot in question even after almost 11 years of the payment of booking amount towards the same and more than 10 and a half years of execution of the Plot Buyer's Agreement.
8. That it is important to highlight that the respondent company had vide letter dated 20.09.2014, intimated that instead of the already allotted plot no. 77, the booking has been changed to plot no. 56. That the



complainant, who had already paid his hard earned money to the respondent, was made to accept the said change in plot number vide acceptance letter dated 20.09.2014.

9. That thereafter vide a letter dated 07.07.2015 titled as 'call letter for possession', illegal and exorbitant demands were raised, wherein the complainant was asked to pay Rs. 37,34,356/- on illegal counts whereas the basic sale price was only Rs.35,77,600/- against which complainant has already paid a sum of Rs.19,92,000/-. Complainant submits that the said 'call letter for possession' contained a payment demand of Rs. 8,44,699/- towards total EDC/IDC Due', wherein the said demand is infact qua Enhanced E.D.C. disguised and hidden under the demand for Total EDC/IDC Due'. That the said unreasonable charges qua Enhanced E.D.C. have already been stayed by the Hon'ble Punjab and Haryana High Court as communicated vide order dated 07.11.2013 of Directorate of Town and Country Planning Department in this regard. Moreover, such 'call letter for possession' was not the possession letter as required under law as the respondent company itself mentioned therein the following:

".....the 'Possession Letter' will be issued to you within a period of 10-15 working days."

10. That the complainant submits that had the respondent company complied with the assurances and the due date of possession by handing over the

had

possession of the plot to the complainant in time, the issue regarding enhanced EDC, IDC etc. would not have arisen, as the same was increased subsequently after the due date of possession.

11. That the complainant submits that the respondent company has still not obtained the completion certificate from the concerned authorities, therefore no legal offer of possession has ever been made to the complainant qua the plot in question by the respondent company, and the delay thereto is continuing till date. He also submits that in accordance with the principles laid down in the RERA Act, 2016, it is the duty of the promoter to obtain the completion/occupancy certificate and to make it available to the allottees, which the respondents have miserably failed to adhere to. The relevant provision pertaining to the same is being reproduced hereunder:-

"11 (4): The promoter shall-

(b) be responsible to obtain the completion. certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;"

12. That the complainant submits that the respondent company is engaged in mischief, and has also defaulted in the payment of the E.D.C. and other



statutory dues to the concerned Government Authorities and Departments and as such the sale purchase etc. had all been halted by the official Authorities, owing to the malafides on the part of the respondent company.

13. That the complainant submitted that the terms and conditions enumerated in the agreement are drafted with utmost cunning demeanour, and the said document is totally unilateral and one sided, wherein stringent duties have been cast upon the complainant/allottees with very few rights, and the same is clearly against the model agreement for sale as enshrined in the Haryana Real Estate (Regulation and Development) Rules.
14. Complainant further submitted that clearly the terms of the said agreement have been drafted mischievously by the respondent and are completely one sided as also held in para no. 181 of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)*, wherein the Hon'ble Bombay High Court bench made the following observations:

"...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."



15. That it is pertinent to mention that multiple and several criminal cases are pending against the officials of the respondent company. The documents in this regard are already annexed with the captioned complaint. Hence, present complaint has been filed seeking reliefs as being prayed for.

C. RELIEFS SOUGHT

16. The complainant in his complaint has sought following reliefs:
- a. To direct the respondent to offer immediate legal possession of the unit in question, i.e., plot no. 56 to the complainant allottee, on receipt of the completion certificate/occupation certificate and all other necessary clearances etc., and after rectifying the payment demands thereto.
 - b. To set aside the offer of possession letter dated 07.07.2015 and declare the same as void, for the reasons mentioned in the complaint.
 - c. To direct the respondent to compensate for delay in offer of possession by paying interest as prescribed under the Real Estate (Regulation And Development) Act 2016 read with Haryana Real Estate (Regulation & Development) Rules 2017 on the entire deposited amount of Rs. 19,92,000/-. (Rupees Nineteen Lakh, Ninety Two Thousand only) which has been deposited against the property in question so booked by the complainant, w.e.f. the due date of



possession till the actual and legal handing over of the possession to the complainant.

- d. To set aside and quash the illegal and exorbitant payment demands under the head of E.D.C. / Enhanced E.D.C., and direct the respondents to refund the amounts already taken thereto from the complainant, along-with interest as prescribed.
- e. To set aside any other illegal demands being raised by the respondent company, and to direct the respondent to raise the demands in strict conformity to the Act and Rules, and in adherence of the agreed terms between the parties, for the reasons stated in the instant complaint.
- f. To direct the respondent company to get the conveyance deed executed qua the plot in question in the name of the complainant allottee after duly handing over the possession of the same.
- g. To revoke the registration, if any, granted to the Respondent for the project namely, "Jay Dee Greens" being situated in the revenue estates of Karnal, District Karnal, Haryana, under RERA read with relevant Rules, under Section 7 of the RERA for violating the provisions of The Act.
- h. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the instant complaint.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

17. Despite successful service of notice to the respondent on 07.09.2023, respondent has neither filed his reply, nor made any representations on his behalf since last 4 hearings. Today also, none has appeared on behalf of respondent. It is pertinent to note that the proceedings before the Authority are summary in nature. Sufficient opportunities have already been offered to the respondent to file the reply and also to argue the matter. Since reply has not been filed and none is appearing to argue on behalf of the respondent, the Authority decides to proceed with this matter ex-parte and decide the matter on basis of the documents placed on record.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT:

18. During oral arguments learned counsel for the complainant reiterated arguments as mentioned at Para 3-15 of this order. Ld. counsel for the complainant has submitted in the previous hearings that there is an issue with regard to the renewal of license which is causing problem for the execution of the conveyance deed but the same has not been pressed on the date of final arguments and the complainant counsel submitted that facts in his complaint may be taken on record as his submissions and again submits that the intentions of the respondents have always been malafide bringing the attention of the Authority towards the criminal cases being filed against the respondent.



F. ISSUES FOR ADJUDICATION

- a. Whether the complainant is entitled to get relief of possession of residential unit booked by him along with interest for delay in handling over the possession in terms of Section 18 of RERA Act of 2016?
- b. Whether demands raised by respondent are illegal?
- c. Whether offer of possession is legal?

G. FINDINGS OF AUTHORITY ON RELIEFS CLAIMED BY THE COMPLAINANT AND OBJECTIONS RAISED BY RESPONDENT

19. Authority had gone through documents on record and heard the arguments of the complainant. Upon perusal of file, the Authority observes that it is not disputed that the complainant booked a plot in the year 2011 and was allotted plot bearing no.77, admeasuring 344 sq. yrds. in the real estate project "JAY DEE GREENS" at Karnal, Haryana, being developed by the respondent promoter namely, JD Universal Infra Ltd. However the plot no. 77 was subsequently changed to plot no.56 vide letter dated 20.09.2014. That plot buyer agreement was executed between the parties on 30.12.2011; however possession has not been delivered till date.



20. The complainant in the complaint disputes the BBA (Builder Buyer Agreement) executed by him on 30.12.2011 to be unfair and arbitrary with its terms being alleged to be one-sided. It is asserted by the complainant that he had unequal bargaining power. Authority observes that since BBA constitutes the sole basis of subsisting relationship of the parties, both the parties are lawfully bound to obey the terms and conditions enunciated therein. Respondent had raised each specific demand strictly in consonance with the payment plan opted and agreed at the stage of booking as well as within the ambit of the clauses agreed and accepted by the complainant at the time of execution of BBA. Complainant after thorough reading and understanding of the terms and conditions as mentioned in the BBA signed the agreement that too without any protest and demur. It is pertinent to mention here that the agreement was executed prior to the coming in force of Real Estate (Regulation and Development) Act, 2016 (RERA Act in brief). Therefore, agreement executed prior to the coming into force of the Act or prior to registration of project with RERA cannot be reopened.
21. Further complainant has disputed that respondent has illegally raised demands vide demand letter issued by it on 07.07.2015, wherein the complainant was asked to pay Rs. 37,34,356/- on illegal counts whereas the basic sale price was only Rs.35,77,600/- against which complainant has already paid a sum of Rs.19,92,000/-. Said demand letter also



contained payment of amount of Rs.8,44,699/- towards EDC/ enhanced EDC. Authority observes that as per the order of the Hon'ble High Court in the CWP no. 5835 of 2013 (Balwan Singh v. State of Haryana), the court stayed operation of HUDA memo no. HUDA-CCF-Acctt-I-2011/21224 dated 14.07.2011, in pursuance of which it is ordered by DTCP Haryana vide order dated 07.11.2013 that the department will not insist on payment of enhanced EDC from the licensees for the time being. Thus, casting a duty on the respondent to not press for further charges in lieu of enhanced EDC and to deposit with the Department any amount taken whatsoever. Therefore, Authority observes that demands in lieu of EDC/ enhanced EDC are liable to be quashed and respondent has to act as per direction contained in DTCP Haryana order dated 07.11.2013.

22. Furthermore, Authority observes that as per submissions made by the complainant, the Occupation Certificate has still been not issued by competent Authority whereas offer of possession cum demand letter was issued by the respondent on 07.07.2015. It is clear from the perusal of the file that such 'call letter for possession' is not a possession letter as required under law. Therefore, the said offer of possession is held to be invalid and illegal. Possession should not have been offered to the complainant without obtaining occupancy certificate and this is a clear unfair trade practice. This constitutes a deficiency in service as held in the case of *Treaty Construction v. Ruby Tower Coop. Housing Society Ltd.*,



- (2019) 8 SCC 157 as well as a breach of law. Therefore, the said possession letter dated 07.07.2015 is set aside and declared as void.
23. Further, the facts set out in the captioned complaint demonstrate that possession of the project had been delayed beyond the time period stipulated in the plot buyer agreement. It is pertinent to note that the plot buyer agreement failed to mention a specific time period for the offer of possession. It has only been specified that the plot will be offered for possession within a reasonable time period. As per the observation of the **Hon'ble Apex Court in 2018 STPL 4215 SC titled as *M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr***, 3 years has been taken to be reasonable time to hand over possession to the allottee. Thus, the respondent was duty bound to offer possession to the complainant latest within 3 years of the booking (01.04.2011), i.e. latest by 01.04.2014 but now, even after a lapse of 9 years, respondent has not offered a valid offer of possession of the unit and has in fact been demanding further payments in lieu of maintenance and other charges.
24. Complainant, however, does not wish to withdraw from the project and seek refund, rather is interested in getting the possession of his unit. In these circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the unit, the allottee can also demand, and the respondent is liable to pay, interest for the entire period of delay caused at the rates



prescribed. The respondent in this case has not made any valid offer of possession to the complainant till date. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date, i.e., 01.04.2014 up to the date on which a valid offer is sent to him. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(z) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:



“Rule 15: *“Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub.sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of india highest marginal cost of lending rate +2%:*

Provided that in case the State Bank of India marginal cost of lending rate (NCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public..”

25. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e.01.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.
26. Hence, Authority directs respondent to pay delay interest to the complainant for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR) + 2 % which as on date works out to 10.75% (8.75% + 2.00%) from the due date of possession i.e. 01.04.2014 till the date of a valid offer of possession.
27. Authority has got calculated the interest on total paid amount from due date of possession i.e., 01.04.2014 till the date of this order i.e.



09.11.2023 which works out to ₹20,49,073/- and further monthly of ₹17,601/- as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 09.11.2023 (in ₹)
1.	1,01,000/-	01.04.2014	1,04,410/-
2.	4,00,000/-	01.04.2014	4,13,507/-
3.	12,91,000/-	01.04.2014	13,34,593/-
4.	2,00,000/-	21.09.2014	1,96,563/-
Total:	19,92,000/-	-	20,49,073/-
Monthly interest:	19,92,000/-		17,601/-

28. It is pertinent to mention that complainant has claimed to have paid an amount of ₹19,92,000/- vide receipts annexed as Annexure C-1 from page no.25-27.
29. Further, complainant seeks execution of conveyance deed qua the plot in question in his name after delivery of possession. From the perusal of the file of the case, Authority observes that it is difficult to get the conveyance deed executed as there is an issue with regard to the renewal of license, which has not been renewed by the competent Authority, due to non-representation on their behalf. The Authority therefore, directs the respondent company to execute the conveyance deed once the issue with



regard to renewal of license is solved. Further, Authority is of the considered view that there is no impediment on execution of conveyance deed in favour of an allottee when allottee pays the full consideration and gets the possession. After this stage, execution of conveyance deed is nothing but updating of records in respect of transfer of property. In the present case, complainant has not paid the entire consideration and not received the possession yet. Thus, complainant is liable to pay the balance dues as and when fresh demand letter is sent by respondent to him along-with legally valid offer of possession and details of receivables and payables in terms of RERA Act and Rules. Thereafter, upon payment of dues if any, complainant is entitled to possession of allotted unit. Accordingly, after delivery of actual physical possession of unit, the respondent-promoter is obligated/duty bound u/s 17 of the RERA Act, 2016 to execute a registered conveyance deed in favour of the complainant-allottee.

30. Further, in relation to the relief in regard to the revocation of registration granted to the Respondent for the project namely, "Jay Dee Greens" being situated in the revenue estates of Karnal, District Karnal, Haryana, Authority holds that when the project is not registered with them, there arises no question of revoking it because it a rule of law that we can't devoid a person of the right which he does not behold.



H. DIRECTIONS OF THE AUTHORITY

1. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the RERA Act, 2016 to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to pay upfront delay interest of ₹20,49,073/- (till date of order i.e. 09.11.2023) to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order, further monthly interest @ ₹17,601/- till the offer of possession after receipt of occupation certificate;
- (ii) Complainant will remain liable to pay balance consideration amount to the respondent at the time of valid possession offered to her.
- (iii) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e. 10.75% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.
- (iv) Impugned notice cum call letter for possession dated 07.07.2015 is hereby quashed as it being illegal and invalid. Thus, respondent is directed to modify the demand letters issued to the complainants.



- (v) Respondent is directed to execute conveyance deed of the allotted unit in favour of complainant within 15 days of handing over of legally valid possession of the plot to the complainant. Complainant shall pay the required stamp duty/registration charges and other pending consideration.
- (vi) The respondent shall not charge anything from complainant which is not part of the agreement.
2. **Disposed of.** File be consigned to record room after uploading on the website of the Authority.



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



.....
NADIM AKHTAR
[MEMBER]