HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 462 OF 2018

Vishal Singh

....COMPLAINANT(S)

VERSUS

M/s JBB Infrastructure Pvt Ltd

....RESPONDENT(S)

2. COMPLAINT NO. 465 OF 2018

Anju Gupta and Another

....COMPLAINANT(S)

VERSUS

M/s JBB Infrastructure Pvt Ltd

....RESPONDENT(S)

3. COMPLAINT NO. 468 OF 2018

Krishan Lal Dhingra

....COMPLAINANT(S)

VERSUS

M/s JBB Infrastructure Pvt Ltd

....RESPONDENT(S)

CORAM: **Rajan Gupta** **Chairman**
Anil Kumar Panwar **Member**
Dilbag Singh Sihag **Member**

Date of Hearing: 06.08.2019

Hearing:9th

Present: - Mr. Vishal Singh, Complainant in person
(in Complaint No. 462 of 2018)

Mr. Arun Gupta, Complainant in person
(in Complaint No. 465 of 2018)

Mr. Krishan Lal Dhingra, Complainant in person
(in Complaint No. 468 of 2018)

Mr. Jitender Kadyan, Representative of respondent

ORDER (RAJAN GUPTA- CHAIRMAN)

1. All the above-captioned complaints have similar and more or less identical issues and belong to the same project of the respondent, therefore, they are taken up together for hearing and disposal.

2. In order to adjudicate upon the issue of super area of the units the Authority vide its order dated 20.12.2018 had appointed an expert agency namely "K Y Consultant Pvt Ltd" to carry out necessary measurement at the site and submit their report. Accordingly, the site was

visited by the expert agency on 08.02.2019, 14.02.2019 and 26.02.2019. The report of expert agency was submitted on 11.04.2019. Both parties were supplied a copy of the report. Today is 9th hearing of this matter to deliberate upon remaining issues regarding determination of super area, supply of electricity, water and maintenance charges. Prior to this hearing, the issue of club charges, External Electric connection charges, Fire Fighting Charges and cost escalation had already been decided by the Authority vide its order dated 31.10.2018 and 20.12.2018. The said orders shall be read as part of this order.

3. On the last date of hearing, respondent was directed to file his objections in respect of the report of the expert agency. The objection have been filed today in the court and a copy of same was also supplied to complainants in the court itself. Further a representative of the expert agency was called to clarify certain points in the report, accordingly, Sh. K.K Bhugra head of the expert agency is present in the court to assist the Authority.

4. During the course of hearings, respondent objected to the calculations of built up covered area of 3BHK; Corridor, fire, electrical, LV & other shafts and entry lobby areas, depicted as 1405 sq ft and 2831 sq ft respectively in the report of expert agency. He stated that these areas should be 1409.7 sq ft and 3001 sq ft respectively. On the other hand, the

complainant agrees with the report of expert agency in respect of these calculations.

5. After hearing objections of the respondent, Authority is of view that difference between the calculation provided by expert agency and calculations provided by respondent is very minor. This sort of minor difference does not affect the rights of any party involved in the dispute. Therefore, calculations provided by the expert agency shall be taken as correct.

6. Both parties however do not agree with the area of mumty, machine room and water tank depicted as 1884.17 sq ft in the report. As per the calculations of complainant, it should be 897.943 sq and the respondent state it to be 984.81 sq ft. Sh. Bhugra admitted that there is clerical error in the report and stated that out of typographical error the area of mumty, machine room and water tank has been written as 1884.17 sq ft whereas it should have been 897.943 sq ft.

7. In order to adjudicate upon the issue of mumty, machine rrom and water tank, Authority referred the judgement dated 29.01.2019 passed in complaint no. 607/2018 titled as Vivek Kadyan vs TDI Infrastructure pvt ltd whereby it was held that the area of mumty, machine room and water tank cannot be charged at the same rate as the carpet area of the apartment. The respondent however can recover the cost for said facilities from each allottee by dividing its actual cost amonst all the

apartments/units and that proportionate actual cost amonst alongwith 15% margin can be recovered from each allottee.

The relevant portion of said order in complaint no. 607/2019 is reproduced below for ready reference:-

> *"vi). Mumty/machine room/water tanks area:- Typically, a Mumty is a shed made over the staircase leading to the top terrace. Machine room is a covering over the machines installed for the usage of the building like the roof cast over the lift are and other similar facilities. Water tanks are usually kept open on the terrace area and sometime a roof is constructed over them for protection from rain etc.*
>
> *The water tanks, machines, mumties etc. are a part of the basic services provided in an apartment/complex. When a person purchases an apartment, he presupposes provision of all basic services like drinking water, drainage sewerage system, electricity supply, road and street light system etc. The cost of all such facilities is invariably a part of the overall cost of the apartments. Its cost is presumed to be included in the per square foot cost of the apartment.*
>
> *Another facet of this issue is that entire super area is being charged at the same rate as the carpet area of the apartment. The carpet area of the apartment includes flooring, RCC roof painting of the walls, conduiting, window etc. The cost per sq.ft. of the covered area containing all these facilities is entirely different from the cost per sq.ft. of mumty, machine rooms or the water tank area. Therefore, the cost per square foot of these facilities is much less than the cost per square foot of the carpet area. The facilities like mumty, machine room & water tank areas can either be considered as a part of the services in*

the apartments therefore, not chargeable at all, or if there is a provision in the agreement for charging extra for these facilities then the same can be charged at the rate of the actual cost incurred divided proportionately amongst all the apartments, and not at the rate per sq. ft. of the carpet area.

The agreement made between the parties in regard to these facilities is rather vague. The respondent should have precisely defined the area to be calculated under such facilities and also the rates chargeable for the same, since costing of these facilities has not been defined properly and unambiguously, they now have to be interpreted in a reasonable manner. This Authority therefore determines that the actual cost incurred on these facilities shall be worked out and that actual cost shall be divided amongst all apartments, and that proportionate actual cost along with 15% margin shall be charged from each of the allottee and the complainants. The areas of such various facilities cannot be allowed to be charged at the same rate as the carpet area of the apartment.

Accordingly, on the basis of the above principle 104.5 Sq. ft. area shall be deducted from the 1783.5 super area charged by the respondent. The respondent accordingly shall charge the complainant for only 1783.5 (-) 104.5 = 1679 sq. ft."

Accordingly, on the basis of the above principle, 28.06 sq ft area shall be deducted from the 1850.022 sq ft super area. However, the respondent is entitled to recover the proportionate cost +15% profit from each allottee/complainant in respect of these facilities.

8. Further, it is observed that parties do not agree with non-parking area depicted as 5579 sq ft in the report. As per respondent's calculations it should be 5583.65 sq ft whereas complainants pleaded that the it is not a part of super area in terms of Part- C of Annexure-II of agreement. The relevant clause of agreement is reproduced below:-

> *PART-C reserved covered/open parking space within JBB Grand individually allotted for his/her exclusive use and excluded from the computation of super area of the said apartment.*
>
> 1. *Covered Car Parking Space on stilt floor level.*
> 2. *Covered Car parking spaces in basement of towers*
> 3. *Car Parking spaces around building(s) for visitors shall be for common use of apartments in JBB Grand.*
>
> *Clause 1.9 The apartment allottees agrees that the reserved covered /open parking space(s) as requested and allotted to him/her for exclusive use shall be understood to be together with the apartment and the same shall not have independent legal entity detached from said apartment. The Apartment Allottees undertakes not to sell/transfer/deal with the reserved parking space independent of the said apartment. The Apartment allottees undertakes to park his /her vehicle in the parking space allotted to him/her and not anywhere else in the said complex. It is specifically made clear and the apartment allottees agrees that the service areas in the basement provide anywhere in the said complex shall be kept reserved for service, use by maintenance staff. Etc and shall not be used by the apartment allottees for parking his/her vehicles. The apartment allottees agrees that all such reserved car parking spaces allotted to the occupants of the building(s) /said complex shall not form part of common areas and facilities of the said apartment/ any building constructed on the said site for the purpose of declaration to be filed by the company under Haryana Apartment Ownership Act, 1983. The apartment allottees agrees and confirms that the reserved parking*

space allotted to him/her shall automatically be cancelled in the event of cancellation , surrender, relinquishment; re-possession etc. of the said apartment under any of the provisions of this agreement. All clauses of this agreement pertaining to use, possession, cancellation etc. shall apply mutatis mutandis to the said parking spaces wherever applicable.

While clarifying the issue of non-parking area depicted as 5579 sq ft in the report , Sh. Bhugra stated that there is only one basement in the project with entry and exit ramps. The area of basement, though free from FAR, is considered as common built up area, therefore a part of the super area, for the purposes of chargeable super built-up area.

As per the calculation submitted by the respondent, parking area of 206 units have been deleted from the chargeable area in light of the fact that the respondent has sold the total parking lots and rest of the area was distributed over total no. of 206 remaining flats in proportion to FAR area. Respondent argue that this seems to be unjustified as the area covered under carparking will also be used as circulation area and as such the 32 m^2 area per parking shall be deducted as per national building code. National Building Code chapter-III clause 10.3(C) which reads as under:-

"Area for each equivalent car space inclusive of circulation area is 23m² for open parking 28m² for ground floor covered parking and 32m² for basement."

The rest of the area shall be chargeable in terms of given formula- (FAR area of a typical tower × Total common circular area outside Tower (A+B)) / (Total FAR area of all Tower × No. of unit in a typical tower).

Taking into consideration the explanation/clarification provided by Sh. K K Bhugra, Authority is of view that the calculations submitted in the report for the other non-parking area is correct and complainants are liable to pay for the unallocated stilt/basement car parking area as a part of super area.

9. After hearing the submissions made by both the parties, the Authority orders as follows:-

a. Final Super area of the unit- On the basis of principles laid down in above mentioned para no.s 4 , 5 , 6 & 7, super area of the 3BHK units comes out to 1821.96 sq ft. Respondent is directed to recalculate the amount payable by complainants for final super area i.e 1821.96 sq ft. In case, amount already received by the respondent is in excess then he shall refund the excess amount to the complainants.

b. Charges for electricity and water supply. Authority vide its order dated 07.03.2019 had directed the respondent to supply electricity and water to the complainant during pendency of these complaints at the same rate as applicable in case of other allottees of the project. Further, in the 7th hearing of the matter on 11.04.2019, complainant had objected to the demand letter of Rs 79,000/- raised by respondent on account of electricity dues, water charges and maintenance charges on the ground that said charges except electricity dues are levied on the basis of super area and facilities provided within the project, since both these issues are in dispute, the maintenance chares are not recoverable at present.

Relevant part of the order dated 11.04.2019 of the Authority is reproduced below :-

> *"Complainants agreed to pay electricity dues but resisted payment of maintenance charges on the ground that the said charges are levied on the basis of super area and facilities provided within the project, and since both these issues are in dispute between the parties, the maintenance charges are not recoverable at present.*
> *After hearing both the parties the Authority directs the complainant to pay full amount of electricity dues and 50% of other maintenance charges which shall to be presumed towards dues of water supply. The respondent is directed to*

restore electricity supply at par with the other allottees/residents of project after deposition of these dues by the complainants. Remaining charges, whether justified or not, will be taken for consideration at the time of final disposal of the case."

Accordingly, the respondent is directed to raise the demand of electricity dues and water charges after adjusting the amount, if any, paid by the complainant in compliance of order dated 11.04.2019, at the same rate as applicable to other allottees of the project.

c. Maintenance charges- Clause 14.4 of buyer's agreement deals with the fixation of total maintenance charges. Same is reproduced below for ready reference: -

Fixation of total maintenance charges- the total maintenance charges as more elaborately described in the Tripartite maintenance agreement (draft given in annexure-IV) will be fixed by the maintenance agency on an estimated bases of the maintenance costs to be incurred for the forthcoming financial year. Maintenance charges would be levied from the date of issue of occupation certificate for the said complex/date of allotment , whichever is later, and the apartment allottee undertakes to pay the same promptly. The estimates of the maintenance agency shall be final and binding on the apartment allottee. The maintenance charges shall be recovered on

such estimated basis on monthly/quarterly intervals as may be decided by the maintenance agency and adjusted against the actual audited expenses as determined at the end of the financial year and any surplus/deficit thereof shall be carried forward and adjusted in the maintenance bills of the subsequent financial year. The apartment allottee agrees and undertakes to pay the maintenance bill on or before due date as intimated by the maintenance agency.

Regarding this issue, the respondent is directed to furnish a statement of the amounts collected and spent for maintenance of project in terms of clause 14.4 of agreement to RWA of the said project. The RWA shall consider the statement and decide the amount payable by the complainants as maintenance charges.

d. Refund of paid amount- It is an admitted fact that complainant is residing in his unit since november,2016 and time period of almost 3 years has already elapsed. In the prevailing circumstances, request of refund is not acceptable as the complainant has already having possession of the unit the last 3 years. Further, the project in question had received part Occupation certificate on 20.06.2017.

e. Interest charged on delay payments- It is alleged by the complainant that respondent had charged 24% interest rate on delay payment and the same is unreasonable and arbitrary. As per law laid down by this Authority this charge cannot be more than 9% (Nine Percent) per annum. Respondent shall be recalculated this amount accordingly.

10. The matter is disposed of in above terms. File be consigned to record room.

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RAJAN GUPTA
[CHAIRMAN]

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ANIL KUMAR PANWAR
[MEMBER]

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DILBAG SINGH SIHAG
[MEMBER]