



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 267 OF 2018

Deepak SharmaCOMPLAINANT(S)

VERSUS

M/s JBB Infrastructure Pvt LtdRESPONDENT(S)

2. COMPLAINT NO. 269 OF 2018

Vir Vikram KumarCOMPLAINANT(S)

VERSUS

M/s JBB Infrastructure Pvt LtdRESPONDENT(S)

3. COMPLAINT NO. 271 OF 2018

Vinay Narwal and anotherCOMPLAINANT(S)

VERSUS

M/s JBB Infrastructure Pvt LtdRESPONDENT(S)

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

**Chairman
Member
Member**

Date of Hearing: 06.08.2019

Hearing: 10th

Present: - Mr. Gorav Kathuria, Counsel for complainant
Mr. Jitender Kadyan, Representative of respondent

ORDER (RAJAN GUPTA- CHAIRMAN)

1. All the above-captioned complaints involve similar issues pertaining 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 chargeable super area of the units, the Authority vide its order dated 21.11.2018 had appointed an expert agency namely "K Y Consultant Pvt Ltd" to carry out necessary measurement at the site and submit its report. Accordingly, the site was visited by the expert agency on 08.02.2019, 14.02.2019 and 26.02.2019 in the presence of all the parties. Report of the expert agency was submitted to the Authority on 11.04.2019. All the parties obtained a copy of the report.
3. Today is 10th hearing of this matter to deliberate upon issues regarding determination of super area, Fire Fighting charges, Electric connection charges and maintenance charges. Prior to this hearing, the issues regarding club charges, open car parking area and cost escalation had been decided by the Authority vide its order dated 09.10.2018. The said order shall be read as part of this order.
4. On the last date of hearing, both parties were directed to file their respective objections, if any, to the report of the expert agency, which has been



filed today in the court and copies of same were exchanged by the parties. Further, a representative of the expert agency was called to clarify certain points of the report. Accordingly, Sh. K.K Bhugra head of the expert agency was present in the court to assist the Authority.

5. The captioned complaints pertain to 2BHK, 3BHK and 4BHK apartments. Accordingly, complainant-allottees have submitted their calculations regarding super area of 2 BHK apartment as 1075.44 sq ft ; 3BHK 1609.30 sq ft; and 4 BHK 2166.92 sq ft. Complainants also argued that they are not liable to pay Fire Fighting Charges and electric connection charges in terms of the clause 1.10 and 1.11 of builder buyer agreements.

6. As far 2BHK and 4BHK units, the parties agree with the mumty, machine room and water tank area mentioned as 1475.05 sq ft and 1087.63 sq ft respectively in the report. However, in case of 3 BHK unit, both parties do not agree with the area of mumty, machine room and water tank of 1884.17 sq ft in the report. As per the calculations of the complainant, it should be 897.943 sq ft whereas respondent states the same to be 984.81 sq ft. Sh. Bhugra, head of expert agency agreed that this is a clerical error in the report and stated that in 3BHK apartment, the area of mumty, machine room and water tank should be read as 897.943 sq ft instead of 1884.17 sq ft.

7. Regarding the issue of mumty, machine room and water tank, Authority referred to the judgement dated 29.01.2019 passed in complaint no. 607/2018 titled as Vivek Kadyan vs TDI Infrastructure pvt ltd wherein it has



been 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 for the reason that these facilities costs much less. The respondent however can recover the actual cost of the said facilities from each allottee by dividing its actual cost amongst all the apartments/units proportionately alongwith fifteen percent margin.

The relevant portion of said order passed 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."

8. Considering the above principle, in the case of 2BHK unit, an area of 23.04 sq ft shall be deducted from 1210.95 sq ft super area; in 3 BHK unit, 28.06 sq ft area shall be deducted from 1850.022 sq ft super area; and in 4 BHK unit, 38.84 sq ft area shall be deducted from the 2502.61 sq ft super area. However, respondent is entitled to charge proportionate cost +15% profit from each allottee/complainant in respect of these facilities.



9. It is observed that parties do not agree with non-parking area depicted as 6078.23 sq ft for 2BHK, 5579 sq ft for 3BHK and 6995.50 sq ft for 4BHK apartments as calculated by the expert agency. Respondent however agrees with the report in case of 2 BHK and 4 BHK units, but in case of 3 BHK, said area should be calculated as 5583.65 sq ft. The complainant however pleaded that the said non-parking area should not form part of the 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, Sh. Bhugra stated that there is only one basement in the project with entry and exit ramps. Area of basement, though free from FAR, should be considered common built up area, thus part of the super area for the purpose of calculating 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 the light of the fact that the respondents have sold those parking lots and rest of the area was distributed over remaining flats proportionately.

Taking into account the 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.

10. After detailed consideration of the submissions made by both the parties, the Authority orders as follows:-

- a. **Super area of the unit**



On the basis of the principles laid down in above para no.s 7, 8 & 9 super area of the 3BHK unit comes to 1821.96 sq ft; 2BHK Unit 1187.91 sq ft; and 4BHK unit 2463.77 sq ft. The respondent is directed to recalculate the amount payable by the complainants accordingly. In case the amount already received by the respondent is in excess of the payable amount, he shall refund such excess amount to the complainants.

b. Fire Fighting charges

Authority has examined clause 1.10 of the agreement which, as also reproduced below for reference. It is clear from this clause that fire-fighting equipment is included in the construction of apartments. Accordingly, the complainants are not liable to pay Fire Fighting Charges being levied, as the same is covered under fire fighting system of the said building. This issue stands settled in these terms.

Clause 1.10 of agreement,

“The total price of the said Apartment mentioned in the schedule of payments in Annexure I of this agreement is inclusive of the cost of providing electric wiring and switches in each Apartment and fire fighting equipment in the common areas within the said Building / said Complex as prescribed in the fire fighting code / regulations under National Building Code 1983, amendment No. 3 of January, 1997. Power back-up may be provided subject to timely payment of maintenance charges from stand by generator and shall be in addition to normal power back up for the common areas and common services within the said building. The total price of the Said apartment does not include the cost of electric fittings, fixtures, geysers, electric and water meters, etc. which shall be got installed by the Apartment Allottees at his/her own cost. If due to any



subsequent legislation/ Government order, directives, guidelines or change/ amendments in fire Code including the National Building Code or if deemed necessary by the Company or any of its nominees at its sole discretion, additional fire safety measure are undertaken, then the Apartment Allottees undertakes to pay within Thirty (30) days from the date of written demand by the Company, the additional expenditure incurred thereon along with other Apartment Allottees in proportion to the super area of his/her Apartment to the Total super area of all the Apartments in the said Building / Said Complex as determined by the Company. ”

c. Electric Connection charges

Clause 1.11 of agreement has been examined from which it is clear that the complainant undertook to pay the same. Therefore, this issue stand settled in favour of the respondent. The clause 1.11 is reproduced below:-

Clause 1.11 of agreement

“The Apartment Allottees has agreed and understood that he/she price and other mentioned charges as per the agreed Schedule of Payment (As per Annexure-I). The Apartment Allottees has also agreed and understood that he / she shall pay the charges not specified in the Schedule of Payment including but not limited to fire Fighting Charges (FFC), Electric Connection Charges (ECC) and Power Backup charges (PBC) to the company as and when demanded by the Company”

d. Maintenance charges

Clause 14.4 of buyer's agreement deals with the maintenance charges, as reproduced below: -

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.

The Authority directs the respondent to furnish a detailed statement of the amounts collected from the allottees and spent for maintenance of the project in terms of clause 14.4 of agreement to the RWA of the project. The RWA shall consider the said statement and take a reasoned decision regarding the amount payable by the complainants and other similarly placed allottees.

e. Refund of paid amount

It is an admitted fact that the project in question had received part Occupation certificate on 20.06.2017 for which an application was



filed on 11.07.2016. The respondent in its reply has stated that fit-out possession of the units was offered to complainants in December, 2016/ January ,2017. It clearly shows that the project has been completed and allottees are already residing in the project. Accordingly, the Authority is of the considered view that the plea of refund of the money to complainants cannot be accepted.

f. Delay in handing over of possession

As per clause 10.1 of the agreement dated 15.02.2011, the respondent was duty bound to deliver possession within three years from the date of execution of agreement i.e 15.02.2014 but fit-out possession was offered to complainant in December,2016 after applying for Part Occupation Certificate on 11.07.2016, whereas, part occupation certificate was obtained on 20.06.2017 and possession was offered on 22.06.2017. It implies that a valid offer of possession duly supported with occupation certificate was given on 22.06.2017 by the respondent. In this situation for the delay of 3 years and 4 months in handing over the possession, the respondent is liable to pay delay compensation. The Authority has evolved certain principles on the issue of delay compensation in complaint no. 113 of 2018- Madhu Sareen vs M/s BPTP Ltd and complaint no. 49 of 2018-Parkash Chand Arohi vs Pivotal Infrastructure Pvt Ltd.



The respondent shall pay compensation for the delay caused in accordance with the said principles.

g. Interest charged on delay payments

It is alleged by the complainant that respondent had charged 24% interest on the delayed payments and the same is unreasonable. As per law laid down by this Authority that it cannot be more than 9% (Nine Percent) per annum. Respondent shall recalculate this amount accordingly.

11. In this bunch of complaints and another bunch with complaints no. 462, 465,468 of 2018 pertaining to this project, the expert agency was appointed by this Authority vide order dated 21.11.2018 and 20.12.2018 respectively. It was stated in these orders that the cost of appointing expert agency will be recovered from the party who will be found at fault. As per the report of expert agency, there is difference of 182.48 Sq ft in 2BHK , 352.43 sq ft in 3BHK and 343.85 sq ft in 4BHK in the calculations of the expert agency vis-à-vis the calculations of respondent. Thus, the respondent has been found partly at fault. Therefore, the Authority decides to recover 50 % of cost from the respondent. So, the respondent is liable to pay Rs 2,89,000/- to the Authority within 60 days of uploading of this order.



11. The matter is disposed of in the above said terms. File be consigned to record room.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]

