

**HARYANA REAL ESTATE REGULATORY AUTHORITY,  
PANCHKULA.**

**Complaint Nos.**

1. 287/2018 Umed Singh Versus M/s JOP International Pvt. Ltd.
2. 288/2018 Shilpa Kapoor Versus M/s JOP International Pvt. Ltd.
3. 289/2018 Randhir Singh Versus M/s JOP International Pvt. Ltd.
4. 290/2018 Karamvir Versus M/s JOP International Pvt. Ltd.
5. 291/2018 Manish Kapoor Versus M/s JOP International Pvt. Ltd.
6. 342/2018 Baljeet Singh Versus M/s JOP International Pvt. Ltd.
7. 352/2018 Jagjit Singh Versus M/s JOP International Pvt. Ltd.
8. 353/2018 Dr. Jai Kumar Jain Versus M/s JOP International Pvt. Ltd.

**Date of Hearing:-** 26.09.2018

**Coram:-** Shri Rajan Gupta, Chairman.  
Shri Anil Kumar Panwar, Member.  
Shri Dilbag Singh Sihag, Member.

**Appearance:-** Shri Sudeep Singh Gahalwat, Advocate for complainants.  
Shri S.K. Gupta, Advocate for respondent.

**ORDER:-**

1. The Authority vide its previous order dated 12.09.2018 already declined the prayer of refund and directed the respondent to calculate delayed compensation at the rate of interest equivalent to State Bank of India highest marginal cost landing rate plus 2% applicable to the period for which compensation is payable, under Rule 15 of HRERA Rules, 2017.



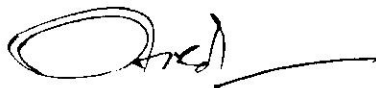
2. Today the respondent has filed calculations of the amount payable to each of the complainants as delayed compensation at the rate as directed by this Authority.

3. Learned counsel for respondent states that his client is already to abide by the directions for payment of delay compensation at the rate stipulated in the order dated 12.09.2018 but humbly requested the Authority to reckon the starting period for calculation of such interest after the lapse of 42 months from the date of issuance of allotment letter.

4. In response to such request of respondent, the complainant's learned counsel submits that his clients have no objection if the initial period of 36 months allowed to the promoter is considered as ~~36~~ extended to 39 months for the purpose of calculating delay compensation. Thereupon, the respondent's counsel has submitted that extension of 36 months period to 39 months is acceptable to him.

5. So, in view of the directions issued by the Authority vide order dated 12.09.2018 and the above referred agreement expressed by learned counsel representing the parties, the complaints are disposed of with the following directions:-

- i) The respondent shall adjust an amount of compensation payable at the rate prescribed in Rule 15 of HRERA Rules i.e. at the rate equivalent to SBI highest marginal cost landing rate plus 2% applicable to the period for which compensation is payable




calculated on the already paid amount, towards the amount payable by the complainant at the time of offering possession.

- ii) The delay compensation so payable to the complainants will be calculated from the date falling after the lapse of 39 months period from the date of issuance of allotment letter and not from the date falling after lapse of 36 months period from the date of issuance of allotment letter as indicated in buyer's agreement.
- iii) The respondent shall offer possession to the complainants in terms of the date of completion reflected in the registration certificate issued under Section 3 of RERA Act, 2016.
- iv) In case the amount of delay compensation payable to a complainant exceeds the amount payable by such complainant at the time of offer of possession, the respondent shall refund the excess amount to him at the time of such offer and failure to do so on his part will entail liability of paying interest at the aforesaid rate till the date of actual payment, in addition to paying such penalty as the Authority imposes on him under Section 63 of RERA Act.
- v) The respondent shall calculate the liability of complainants for payment of VAT only at the actual rate which the government had prescribed for the relevant period.

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6. Cases are accordingly disposed of and the files be consigned to the record room.

  
**Dilbag Singh Sihag**  
Member

  
**Anil Kumar Panwar**  
Member

**Rajan Gupta**  
Chairman

I have perused the order authored my learned friends, Hon'ble Members of the Authority. I have also perused the earlier order dated 12.09.2018 passed in this case by my learned friends when I was not able to attend the Court.

2. On 12.09.2018 Hon'ble Members had allowed the compensation for delayed period of construction of the apartments in accordance with the rules 15 of the RERA Rules i.e.at the rate equivalent to SBI MCLR+2%. This order was passed on the basis of a view taken by the majority members in complaint case No.113 of 2018 titled Madhu Sareen Versus BPTP Ltd.

3. I had expressed a different view with regard to award of compensation for the delay of offer of possession in the said complaint case No.113 of 2018. I have further passed an order in complaint case No.49 titled Parkash Chand Arohi V/s Pivotal Ltd. in which detailed principles have been laid for determining compensation to be awarded on account of delay in handing over possession to the buyers of the apartments.

4. I am unable to agree with the principles adopted by the learned Members in both the orders dated 12.09.2018 and 26.09.2018.

5. The facts of the case reveal that in all the eight complaints, the allotment letter was issued by the respondent to the complainants on various dates between October, 2014 and February, 2015. Further, buyer agreements were executed between the parties 2-3 months after issuance

of allotment letters. As per the agreement the deemed date of offering the possession is 36 months from the date of issuance of allotment letters which in all the eight cases works out to the dates between May, 2017 to February, 2018.

6. Separately the respondent has applied before the Authority for registration of the project in question. The registration so far has not been granted because his licence has not been renewed because the respondent has not paid full amount of due EDC to the Government. The respondent has stated in his application for registration that the revised date of completion of the project is December, 2019. However, in a meeting held with the allottees on 10.6.2018 and 24.6.2018 the respondent has agreed that Phase-I of Tower-B-3 to B-8 will be completed by December, 2018, Phase-II i.e. Tower B-16 to 19 by March, 2019 and Phase-III i.e. Tower B-12 to B-15 by June, 2019. If the dates agreed in the meeting to the allottees is taken into account the delay in offering possession will range from one year to 2 year and 6 months in respect of different allottees.

7. The respondent has also submitted that in this colony there are 442 apartments. Initially booking request was received for 383 apartments. Out of these booking, 114 customers made serious defaults by not paying any money after 1<sup>st</sup> or 2<sup>nd</sup> instalments. He has further submitted that total cost of the project is Rs.125 crores, out of which Rs.86 crores has been demanded but actually only Rs.54 crores have been

received and default on the part of the buyers amounts to Rs.32 crores. The respondent is investing from his own pocket and by way of loans from the banks for completing the project.

8. I consider that this project is located in a relatively low potential economic zone of the State. There is no allegation that the respondent has siphoned away any money received from the allottees. The respondent has invested the money received from the allottees, his own money, as well as the money raised by way of loan, in the project itself. The respondent is sincere and is committed to complete the project but because of downtrend in the property market as well as defaults on the part of large number of allottees the cash flow of the project has stopped. In addition, the EDC amount has to be paid to the Government after collecting the same from the allottees. Since the allottees are defaulting the respondent is also defaulting in the payments of EDC which in turn has resulted into non-renewal of the licence. The project accordingly has got entangled in a vicious circle.

9. In such situations the Authority is duty bound to take a balanced view. On one hand the Authority must protect the interest of the allottees but at the same time it should facilitate completion of the project. If, the project goes into financial crisis the complainants as well as all rest of the allottees will suffer. In the circumstances, this Authority is duty bound to take a balanced view to protect everyone's interests, i.e. the interests of the complainants as well as non-complaint allottees.

10. I have laid down certain parameters which should be followed by this Authority for getting the project completed as well as for compensating the allottees for delay in handing over of possession of apartments to them, in Complaint case No.49 of 2018- Parkash Chand Arohi Vs. M/s Pivotal Infrastructure Pvt. Ltd. A full copy of the said orders is being uploaded as a part of this order. The reasoning and principles laid down in my orders passed in Case No.49 of 2018 will remain fully applicable in the current matter in hand.

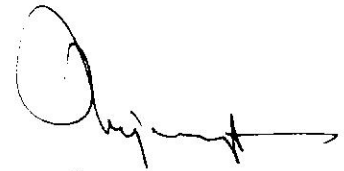
11. Adopting the principles laid down in said complaint case No.49 of 49 of 2018 on facts of this matter I order as follows:-

- (a) The respondents shall ensure that the commitments made by them to the allottees in their meeting held on 10.06.2018 and 24-06-2018 are fully honoured and possession of the apartments is delivered within the revised agreed time frame.
- (b) Clause 35 of the agreement made by the respondent with the complainants provide that in the case of delay in construction of the apartments the respondent shall pay the buyer a sum of Rs.100/- per day for the period of delay. In the circumstances of this matter when no mala-fides have been attributed to the respondent and they have not alleged to have siphoned away money collected from the allottees,



delay up to the revised scheduled of completion agreed by the respondent in the meeting with allottees shall be considered reasonable in this case. Accordingly, for the agreed period of delay, the complainants shall be compensated at the rate provided for in the agreement. Delay beyond that will invite compensatory interest @ SBI MCLR+2%. This however, is without prejudice to the rights of the complainants for seeking compensation from the Adjudicating Officer as per law.

I order accordingly.



(Rajan Gupta)  
Chairman