BEFORE THEHARYANA REAL ESTATE REGULATORY AUTHORITY, PANCHKULA

Complaint No.: 1) 142/2018- RenuDua Vs Jindal Realty Pvt Ltd.

2) 314/2018- Santosh Lathwal Vs Jindal Realty Pvt Ltd

Date of hearing: 22.11.2018

QUORUM:

Shri Rajan Gupta **Chairman**
Shri Dilbag Singh Sihag **Member**

APPEARANCE:

1. Complaint no. 142/2018

1. Shri Sandeep Dahiya Advocate for the complainant
2. Smt. Rupali S.VermaAdvocate for the respondent

2. Complaint no. 314/2018

1. Shri Ramesh Malik, Advocate for the complainant
2. Shri DrupadSangwan, Advocate for the respondent

Order:

1. Both cases listed above have been taken up together as the grievances involved therein are similar in nature and against the same project of the respondent. The orders are passed by taking complaint no. 142/2018- RenuDua vs Jindal Realty Pvt Ltd. as a lead case.

2. Following are the major facts of the case: -

a) The complainant booked the unit no. 68 measuring 1067 sq ft. in the real estate project i.e. "Jindal Global City, Sonepat" on 20.02.2012 by making following payments: -

Sr. No.	Amount	Date of payment
1.	Rs 2,03,847/-	20.02.2012
2.	Rs 2,03,848/-	20.02.2012
3.	Rs 2,32,690/-	03.05.2012
4.	Rs 2,96,354/-	15.06.2012
5.	Rs 2,99,857/-	25.08.2014
6.	Rs 2,99,857/-	22.12.2014
7.	Rs 2,99,857/-	14.02.2015
8.	Rs 3,12,276/-	20.04.2015
9.	Rs 3,14,675/-	04.04.2016

b) Separately, buyer agreement between complainants and promoter respondent was executed on 30.03.2012 and unit no. 68 was allotted to complainant against basic sale price of Rs 24,84,201/- out of which Rs 24,63,261/- had already been paid by complainant between February 2012 to April 2016.

c) As per the agreement made between the complainant and respondent promoter, the possession of the unit was to be delivered upto 30.03.2015.The complainant's grievance is that the respondent has not kept his promise to deliver the possession within stipulated time i.e by 30.03.2015. Therefore, complainant made following prayer for relief in his complaint: -

- Refund of entire deposited amount @ interest rate of 20% within 90 days.
- Respondentto pay Rs.14,00,000/- for deficiency in services and for keeping the complainant in dark.
- Respondent to pay Rs.14,00,000/- for physical harassment.
- Respondent to pay Rs.5,00,000/- for falsified statements.
- Respondent to pay Rs.1,00,000/- to reimburse litigation cost.

3. While submitting written reply,the respondent has denied the main allegation by submittingfollowing averments: -

a) That the complaint is drafted on incorrect interpretation of the Buyer's agreement because in the agreement there is a clause of the Force Majeure conditions. The relevant part of the clause of agreement is reproduced below for ready reference: -

"*Subject to Force Majeure as defined herein and subject to timely grant of all approvals , permissions, NOCs etc. and further subject to the allottee having complied with all his /her /its obligations under the terms and conditions of this agreement, and the allottee not being in default under any part of thisagreement including but not limited to timely payment of the total sale consideration , stamp duty and other charges /fees/ taxes/ leviesandalso subject to the allottee having complied with all the formalities or documentation as prescribed by thedeveloper, the developer proposes to hand over the possession of the unit to the allottees within a period of 30 months from the date of execution of this agreement with further grace period of 180 days.* "

b) It has been argued that the delay in delivery of possession wasnot deliberate rather it was due to the amendment made by the Department of Town and Country Planning in sectoral plan

without informing the promoters. They had raised their objections to the changes in sectoral plan vide representation dated 04.11.2011 before the concerned authority but in vain and the issue of amendment at last decided by the DTCP on 09.02.2015.So, there is no intentional delay on their part.

c) It is also stated that prior to arbitrary revision in sectoral plan, they had obtained approval of layout plan on 08.04.2010 and zoning on 21.09.2011 of their project in question. Respondent has further apprised that they have already obtained Occupation Certificate of the unit on 21.06.2018 and made offer of possession to the complainant on 02.07.2018.

4. Ld. Counsel for complainant alleges that they were not informed of the prevailing force majeure conditions at the time of booking and it is evident from the payment receipts that the promoter being aware of the amendment in sectoral plan , knowingly and consciouslyaccepted theamount/installmentsalong withdelay interest charged on the respective installments fallingbetween the periodwhich they claimed as"Force Majeure". Besides it is prudent to mention that there exists a delay of 3 years and 3 months in offering possession of the booked property.

5. Ld. Counsel for respondent, to counter the averments of complainant submitted that the development work halted due to the revision/ change in sectoral plan. There was no intentional/ deliberate delay on part of the

respondent. So, the period for finalization of revised sectoral plan i.e. 04.11.2011 to 09.02.2015 should not be considered towards the commitment period for delivery of possession nevertheless complainant had booked the flat in 2012 when the sectoral plan was under revision.

6. Written pleading of both the parties have been examined and their oral submissions have been noted. It is observed and ordered as follows: -

(i) Admittedly the buyers agreement was made on 30.03.2012 with the stipulation that the apartment will be delivered within a period of 30 months, thus the deemed date of delivery comes to 30.03.2015. The actual offer of possession, however, has been made on 02.07.2018 after obtaining the occupation certificate on 21.06.2018. Accordingly, there has been delay of nearly 3 years and 3 months in offering possession of the apartment. Since the project has now been completed and the possession has been offered, the prayer of the complainant for refund of the money is not justified, however, he shall be entitled to the compensation for the delayed period of delivery.

(ii) Regarding the plea of the respondents that their project remains halted between the periods November, 2011 to February, 2015 due to force majeure conditions, it is correct that the sectoral plans were revised by the State Government authorities due to which development remain halted for a period of nearly 3½

years. Respondents had started their projects after getting their lay out plans approved in the year 2011 but due to the revision of the plans by the State authorities, the development works could not progress as per schedule. For this reason the delay period is not unjustified.

However, it is observed that the respondents during this period of halted development continued to receive payments from the complainants. If the project was not developed they should not have demanded more money from the complainants. It is also a fact that the complainants have paid the money during this period and now it cannot be argued that they will not get any compensation. The money has cost. For the cost incurred by the complainants they needs to be suitably compensated.

(iii) This Authority in Complaint Case No.113 of 2018- Madhu Sareen Vs. M/s BPTP Ltd. and Complaint Case No. 49 of 2018- Parkash Chand Arohi Vs. Pivotal Infrastructure Pvt. Ltd. have laid down principles for compensating the allottees for the delay caused by the developers. The Authority has developed the concept of justified and unjustified delay. In this case even though the delay is justified but the complainants would deserve to be compensated for the same because they have been made to

incur extra cost by paying the money for the period when the project was not being developed.

The Authority has further laid down the principles for compensating in such eventualities. The majority members of the Authority have ruled that for the period of delay compensation shall be payable in accordance with the Rule 15 of HRERA Rules. However, the 3rd Member has ruled that compensation at the rate provided for Rule 15 is not applicable in such circumstances. Detailed reasoning thereof has been given in Complaint Case No. 49 of 2018- Parkash Chand Arohi Vs. Pivotal Infrastructure Pvt. Ltd. It is ordered that compensation shall be admissible in accordance with the majority view. However, views of the minority member will remain applicable as they are.

(iv) It has also been averred the complainants that the respondents have charged interest at the Rate of 24% on some amount of money which was paid with delay. As per precedents set up by this Authority, such high interest rates are unconscious-able. For The delay, if any, caused by the complainants, the delayed interest will be charged @ 9% per annum.

7. In view of the above finding the respondents are directed to send a fresh statement of accounts to the complainants. The accounts

should be prepared in accordance with this order. The complainant shall make payments in accordance with the statement if they agree with it. If any grievance still persist they may approach this Authority again. The respondents shall issue a revised statement of accounts and offer them a fresh letter of possession within a period of 45 days.

Disposed of in above terms. Orders may be uploaded on the website of the Authority and the file be consigned to the record room.

Dilbag Singh Sihag
Member

Rajan Gupta
Chairman