

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
PANCHKULA**

Complaint No. 1. 1048/2018- Nirmala Devi Chaudhary
and Parul Chaudhary Vs M/s Jindal
Realty Pvt. Ltd
2. 1049/2018- Parul Chaudhary and
Nirmala Devi Chaudhary Vs M/s Jindal
Realty Pvt. Ltd

Date of hearing: 08.01.2019

QUORUM:

Shri Rajan Gupta
Shri Dilbag Singh Sihag

**Chairman
Member**

APPEARANCE:

1. Shri Sudeep Singh Gahlawat, Advocate on behalf of Complainant.
2. Shri Drupad Sangwan, Advocate on behalf of 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. This order is passed by taking complaint no. 1048/2018- Nirmala Devi Chaudhary and Parul Chaudhary vs M/s Jindal Realty Pvt Ltd. as a lead case.
2. This complaint was received in the office on 27.11.2018. Notice dated 04.12.2018 was issued to the respondent to file reply. Accordingly, respondent filed his reply on 31.12.2018. Copy of same was supplied to complainant's counsel on 03.01.2019.



3. The complainants' case in brief is that she booked a unit no. C-192 measuring 1050sq ft. in the real estate project "Jindal Global City, Sonapat" on 16.02.2012 by making following payments inclusive of interest charged @18% for delay in making payments: -

Sr no.	Date	Amount
1.	16.02.2012	4,60,921
2.	02.04.2012	2,65,032
3.	15.05.2012	3,34,872
4.	14.07.2015	3,37,552
5.	22.08.2016	3,43,028
6.	22.09.2016	3,40,813
7.	15.12.2016	3,79,450
8.	08.03.2017	24,869
9.	08.11.2017	4,08,239
10.	Total paid	28,94,776/-

A buyer agreement between complainants and promoter respondent was executed on 30.03.2012 and the said unit was allotted to complainant against basic sale price of Rs 31,50,000/-, out of which Rs 28,94,776/- has already been paid by complainant between February 2012 to November 2017. As per the terms of agreement the respondent was supposed to handover the possession of the unit by 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. Further, he also alleges that the respondent has charged the GST which is unjustified, as the same came into force due to respondent's fault of not

handing over the possession of the unit within stipulated time. Therefore, the present complaint is filed by the complainant seeking directions against the respondent to handover the physical possession of the unit at earliest alongwith delay compensation @ rate of 18% and to refund the amount of CGST and SGST charged by respondent.

4. While submitting written reply, the respondent has denied the main allegation by submitting as follows: -

- a) The complaint is not maintainable as it is not filed before appropriate Authority which in this case is the Adjudicating Officer.
- b) The Authority does not have jurisdiction to deal with this complaint as clause 21 of agreement specifically provides that all disputes shall be referred to arbitration being conducted by sole arbitrator.
- c) 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 this agreement including but not limited to timely payment of the total sale consideration , stamp duty and other charges /fees/ taxes/ levies and also subject to the allottee having complied with all the formalities or documentation as prescribed by the developer, 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. ”

“Clause – 20 Force Majeure - In the event of happening of any unforeseen circumstances such as Act of God, fire, flood, earthquake, explosion, war, riot, terrorist acts, sabotage, inability to procure or general shortage of energy, labour, equipment, facilities, materials or supplies, failure of transportation, strikes, lock outs, action of labour unions, court case/decrees/stay, statutory/government permissions, approvals or any other causes (whether similar or dissimilar to the foregoing) which are beyond the control of the development, the developer shall not be held responsible or liable for not performing any of their obligations or undertaking in a timely manner as stipulated in this Agreement. In case of happening of any of the circumstances, the Developer shall be entitled to reasonable extension of time for performing their part of obligation as stipulated in this Agreement.”

- d) It has been argued that the delay in delivery of possession was not deliberate rather it was due to the amendments 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 was decided by the DTCP on 09.02.2015. So, there is no intentional delay on their part. Moreover, the complainant was duly informed of the above stated situation.
- e) Respondent also states that prior to arbitrary revision of sectoral plan, they had obtained approval of layout plan on 08.04.2010 and



zoning plan on 21.09.2011 of their project in question. Besides this respondent has already obtained Part Completion Certificate on 10.03.2016. In respect of unit in question he specifically stated that the unit is almost complete and the respondent will apply for Occupation Certificate within next 30 days.

5. Learned Counsel for complainant submits that the complainant is interested in getting possession of the unit even though there is delay of almost 4 years in handing over the possession. He however requests for waiving off CGST and SGST charges. Further he requested to waive/decrease interest charged at the rate of 18% on account of delay payments.

6. Learned Counsel for respondent contended that the GST is charged as per the tax imposed by the government, therefore, the respondent is not at fault as he has no control over the same.

7. Written and oral submissions of both the parties have been examined in detail and the Authority observes and orders as follows:

- (i) It is an admitted fact that the respondents had obtained approval of their lay out and zoning plans in April,2010 and September,2011 respectively. They had commenced the process of development of the project. However, the sectoral plan under went revision by the Director, Town & Country Planning Department in November,2011. The respondents filed



their objections to the revision of the plans. Anyhow, the department revised the plan in February,2015. Accordingly, the respondents could not have developed the project from November,2011 to February,2015. This period, therefore, will have to be accounted for as force majeure condition. The delay caused in completion of the project for this period cannot be attributed to the respondents.

- (ii) The payments schedule however, reveals that an amount of Rs10,60,825/- was received by the respondent from the complainants in the year 2012. They should not have taken any money from the complainants while force majeure conditions were prevailing. For the money received during this period a reasonable interest shall be paid by the respondent to the complainants from the date of actual receipt of the money upto February 2015. The respondent accordingly will pay the interest to the complainants @ 9% for this period.
- (iii) It is admitted that the project is at advanced stages of completion. The request of the complainants is for giving them the possession of the unit at an early date. The respondent shall offer the possession of the apartment to the complainants complete in all respects after getting the occupation certificate within a period of six months.



- (iv) The complainants have alleged that the respondents have charged them penal interest @ 18% for certain delayed payments. This interest is unconscionable. The respondents shall re-calculate the interest to be charged for the delayed payment @ 9%.
- (v) The respondents are asking for payment of CGST and SGST from the complainants. These taxes came into force w.e.f. July, 2017. Had the apartment been delivered in time the GST would not come into force. However, the delay in completion of the project has been caused due to afore-stated force majeure conditions. In the circumstances the burden of additional tax shall be shared by both the parties in equal proportions.
- (vi) Even after accounting for the force majeure conditions, the deemed date of offering possession works out to 09.02.2018. Since the actual possession has still not been offered, the respondents shall pay compensation for delay delivery of the apartment to the complainants in accordance with the principles laid down by the majority members in complainant case No.113 of 2018-Madhu Sareen Versus M/s BPTP Ltd. The arguments and logic given by the third member in complaint case No.49 of 2018-Parkash Chand Arohi Versus Pivotal Infrastructures Pvt. Ltd. shall remain applicable.



8. The respondent shall issue a fresh statements of accounts within a period of 30 days stating therein amounts which are to be payable by the complainants to the respondents and the amounts which are payable by the respondents to the complainants in accordance with the aforesaid principles. They shall also apprise to the complainants the date when the possession of the apartment complete in all respects after obtaining the occupation certificate shall be offered.

Disposed of. The orders of the Authority be uploaded on the website of the Authority and the file be consigned to the record room.



Dilbag Singh Sihag
Member



Rajan Gupta
Chairman

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