



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1566 OF 2019

Hargian Singh

....COMPLAINANT(S)

VERSUS

Jindal Realty Pvt. Ltd.

...RESPONDENT(S)

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

**Chairman
Member
Member**

Date of Hearing: 25.03.2021

Hearing: 9th

**Present: - Mr. Balram, Ld. Counsel for the complainant (through VC)
Mr. Drupad Sangwan, Ld. Counsel for the respondent**

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. While perusing the file record, it is revealed that complainant had purchased a villa bearing no. E-112 having area 1298 sq ft in respondent's project named as 'Jindal Global City', Sonapat. An agreement dated 12.12.2011 was executed between the parties. As per terms of said agreement the possession of said unit was supposed to be delivered by 12.12.2014. It is alleged that respondent has failed to fulfil his contractual obligations by not offering the unit within stipulated time. Moreover, villa offered vide letter

dated 15.03.2019 is not complete as it is not provided with the agreed fixtures and fittings. Present complaint has been filed by the complainant seeking directions against the respondent to deliver possession of complete unit alongwith delay compensation.

2. On the other hand, respondent in his written reply has stated that the complaint is drafted on incorrect interpretation of the Buyer's agreement as there is a clause of the Force Majeure conditions in the agreement itself. The relevant part of the clause of agreement was read out by Id. counsel and the same 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/decreed/stay, statutory/government permissions, approvals or any other causes (whether similar or dissimilar to the foregoing) which are beyond the control of the developer, 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.”

3. It has been argued that the delay in delivery of possession was not deliberate rather it was due to the amendments carried out by the Department of Town and Country Planning in sectoral plan without obtaining any consent and informing the promoters. They had raised their objections against the amendments 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 promoters part.

4. Ld. counsel for the respondent also pleaded 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, respondent had already obtained Part Completion Certificate on 10.03.2016. as far as unit in question is concerned it has been stated that the unit is complete as possession has already been offered to the complainant on 15.03.2019 after duly receiving occupation certificate on 22.01.2019 from the competent Authority. But the complainant did not come forward to take possession after paying outstanding amount of Rs 44,97,741/-.

5. While perusing past references in the file record it is also found that this case was heard and discussed at length on hearing dated 23.12.2020 regarding various like additional demand of Rs 6,04,250/- for increase in area

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from 1298 sq ft to 1587 sq ft, charging of Rs 1,91,636/- on account of Preferential location charges, charging of Rs 3,67,045/- on account of delayed payments, charging of Rs 4,68,092/- on account of GST charges and lastly interest @9% on the amount collected during force majeure period. Vide relevant order dated 23.12.2020 Authority had made observations/findings on each issue and directed the respondent to prepare revised statement of accounts in accordance with it and submit its copy before the Authority with advance copy to the complainant.

6. On the last date of hearing dated 17.02.2021 the case was discussed at length taking into account statement of account filed by respondent and tentative observations in respect of issues pertaining to maintenance charges, holding charges, Preferential location charges, GST charges and increase in area were given by the Authority. A copy of said statement has been supplied to the complainant by the office.

7. Considering the statement made today by counsels appearing on behalf of both parties, it has been observed that both parties agree upon amount of Rs 7,76,768/- mentioned at page no. 1 of statement of accounts under the head of Jindal Realty, respondent's liability. Said amount include delay interest, amount of interest to be paid on account collected during force majeure period and GST charges to be borne by the respondent. Ld. counsel for the complainant argues that respondent could not charge both holding as well as maintenance charges. Further Preferential location charges was contested as the respondent is yet to

prove whether green area specified in the layout plan has been approved as a green belt from the concerned department. He also disputed the amount of Rs 71,760/- charged as IFMS stating that said amount is to be charged at the rate of Rs 150 per sq yards in terms of builder buyer agreement but respondent is charging it at the rate of Rs 300 per sq yards.

8. As far as issue of holding and maintenance charges, it has been decided by the Authority that since complainant has not taken possession of the unit for the reason that he had certain objections in respect of additional amount raised alongwith said offer, the respondent could not ask for holding charges from the complainant. However, respondent can only claim maintenance charges from the complainant-allotee as he was duty bound to maintain the project irrespective of fact that whether complainant has taken possession or not.

9. Ld. counsel for respondent has today placed on record copy of approved layout plan in order to justify the amount to be charged on account of PLC. Argument rendered by counsel for the respondent is that department of Town and Country planning has approved the green space measuring approximately 1000 sq yard. Unit allotted to the complainant is abutting said green space so the amount of PLC is justified. Authority is convinced with the argument of respondent's counsel as DTCP has already granted approval of green belt for said portion. So, the complainant is liable to pay amount of PLC to the respondent.

10. So long as amount of Rs 71,760/- to be charged on account of IFMS is concerned the plea of respondent is that said amount was revised by the respondent-promoter in year 2012 but no document has been referred in support of his argument. In terms of builder buyer agreement dated 12.12.2011 the charges agreed for IFMS is Rs 35,850/- i.e. @ Rs 150 per sq yards and accordingly the respondent can only charge as per builder buyer agreement.

11. Lastly, the issue remains to adjudicate upon is increase in area from 1298 sq ft to 1587 sq ft. In order to justify the increase in area, the respondent has placed on record component wise detail of increased area. In this regard Authority has already decided certain principles as to what ~~all~~ are the components to be included in the covered/super area vide order dated 20.11.2018 passed in complaint no. 607/2018-Vivek Kadyan vs TDI Infrastructure Pvt Ltd. In the present case, there are three components on the basis of which area has been increased those area first; Mumty, second is Projections over windows and third is raised platforms in front and rear courtyards. As far as issue of mumty is concerned it has already been decided by the Authority that it is not a part of covered/super area. So, area of mumty has to be deducted from the super area.


12. Regarding other two components it is required to decide them on certain principles and the said principles would be applicable uniformly in future on all such cases. Considering projections raised over windows it is observed that it is


a minor component of civil works and accordingly it is presumed that such component has already been included in the total estimate of civil works at the time of calculation of construction of a building therefore the Authority cannot permit the respondent to charge additional cost of super area, at maximum , he may be allowed to charge actual cost of raised platforms in front and rear courtyards without permitting him to charge projections over windows on any justification. Therefore, these issues are decided in aforesaid terms.

13. Accordingly, the respondent is directed to deliver physical possession of the unit complete in all respects within 30 days to the complainant alongwith statement of account in terms of the principles incorporated in above paragraphs.

14. With the aforesaid directions, the matter is **disposed of.** 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]