



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2712 OF 2019

Sumit Kumar

....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. Sumit Kumar, Complainant in person (through VC)
Mr. Drupad Sangwan, Ld. Counsel for the respondent.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. While perusing file record, following facts revealed. Complainant had booked unit no. B-89 having area of 1363 sq ft in respondent's project-'Jindal Global City', situated in Sonipat. Buyer's agreement was executed between the parties on 12.07.2012 and accordingly said unit was allotted to complainant-allotee for a total sale consideration of Rs 38,74,803/-. In terms of said agreement,

possession was to be delivered upto 12.07.2015 whereas possession was offered on 07.10.2019 alongwith additional demand of Rs 12,31,850/-. As per complainant's version, he has already paid Rs 34,37,940/-. Therefore an outstanding amount of Rs 4,36,863/- is yet to be paid. Complainant-allottee is seeking justification of an amount of Rs 12,31,850/- raised by the respondent. It is also alleged in the petition that area of unit has been arbitrarily increased from 1363 sq ft to 1559 sq ft by the respondent without any intimation and prior consent of the allottee.

2. Therefore, present complaint has been filed by the complainant seeking adjudication of the issues mainly concerning to increase of super area; extra demand of Rs 12,31,850/- and lastly permissible interest for the delay caused in delivery of possession and respondent's conduct in collecting money even during the period when no construction activity was being carried out due to revision of sectoral plan of the project.

3. On the other hand, respondent in his written reply has stated that complaint is drafted on incorrect interpretation of the Buyer's agreement because in the agreement itself there is a clause of the Force Majeure conditions. 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/decreed/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.”

4. It has been argued that 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 issue of amendment was decided by the DTCP on 09.02.2015. So, there is no intentional delay on their part.

5. 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, respondent has already obtained Part Completion Certificate on 10.03.2016. In respect of unit in question it has

been stated that the unit is complete as possession has already been offered to the complainant on 07.10.2019 after duly receiving occupation certificate on 03.10.2019.

6. In order to justify increase in area, respondent has referred to clause 8 of Buyer's agreement wherein it was mentioned that the area mentioned in agreement is tentative and not final.

7. Vide order dated 05.02.2020 it was observed by the Authority that the complainant could not offer any valid objection regarding his liability to pay amount of Rs 3,07,299/- charged for EDC, IDC, Electric connection and water charges and has confined his grievance only with regard to Rs 5,23,012/- being demanded on account of increased super area and of Rs 2,99,794/- being demanded as GST charges. The issue of GST charges was discussed at length and it was decided that both parties are liable to bear the cost of GST in equal proportion in view of principles laid down in already decided complaint bearing no. 569/2018 and 1048/2018 of the same project.

8. Admittedly, complainant has opted for construction linked plan and therefore respondent was not entitled to take any demand or to collect any amount from the complainant during force majeure period. In case, respondent has collected any amount during the said force majeure period, he shall pay interest @9% per annum to the complainant on the money so collected from the complainant-allotee.

9. In order to resolve the issue of increase of super area from 1363 sq ft to 1559 sq ft, Authority vide its order dated 03.03.2020 had appointed 'Planner Plus' as local commissioner to carry out the measurement of area of the unit in question in presence of both the parties and to submit his report alongwith detailed calculation on the point that whether final area being offered by the respondent actually exists on ground or not and also whether the said final area is in accordance with approved plans or not. Site inspection was carried on 05.09.2020 and report was submitted on 07.01.2021.

10. Initiating his arguments ld. counsel for the respondent stated that actual area as per report of local commissioner at site is 1559 sq ft, however area of balconies and platforms have not been considered by local commissioner as part of super area. Considering detailed calculation provided at page no. 3 of report, it is found that both parties agreed upon covered area depicted as 1317.88 sq ft. Complainant is having objection to area of balconies of common projection depicted as 45.96 sq ft and area of various platforms depicted as 194.78 sq ft. After hearing contentions of both parties, Authority is of considered opinion that balconies which are accessible for frequent use can be considered part of super area. But platforms depicted as 194.78 sq ft are not a part of super area as they are merely architectural landscape design, though respondent can recover its actual cost by charging it at the rate of Rs 100/- per sq ft. Accordingly, final super area for the said unit comes out to 1363.84 sq ft.

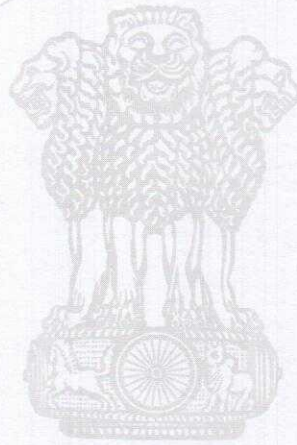
11. Complainant herein is also entitled to delay interest for the delay caused by the respondent from the deemed date of possession to valid offer of possession i.e. 09.02.2018 to 07.10.2019 at the rate prescribed in Rule 15 of HRERA Rules, 2017. In order to maintain parity between the parties, it is clarified that in case, payment of instalment have been delayed by the complainant then for said delay, respondent can recover interest at the same rate of interest i.e. Rule 15 of HRERA Rules, 2017.

12. It is pertinent to mention here that Local Commissioner was appointed in 3 complaints cases bearing no. 1000/2019 , 1576/2019 and 2712/2019 pertaining to same project-Jindal Global City Sonipat in order to resolve issue of increase in super area. Complaint no. 1000/2019 and 1576/2019 stands disposed of as mutually settled vide order dated 17.02.2021 and 25.11.2020 respectively. However, cost of Rs 42,000/- of local commissioner has not been recovered from the parties. In Complaint no. 1000/2019 and 1576/2019 parties could have avoided appointment of local commissioner by getting the issues settled prior to appointment of local commissioner so in these cases each party shall bear cost of local commissioner in equal proportion i.e. Rs 7,000/- to be paid to the Authority towards cost of local commissioner. In complaint no. 2712/2019, calculations made by local commissioner shows that actual area being offered by the respondent actually exists at ground as there was no discrepancy regarding calculations of super area. But the area of various platforms and balconies was

not explained in detail by the respondent to the complainant in order to satisfy him regarding increase in super area. So, in this case also both parties shall bear cost in equal proportion i.e. Rs 7,000/- to be paid by each party to the Authority towards cost of Local Commissioner.

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]