



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No.:-1190 of 2019

Date of Institution: -28.05.2019

Date of Decision:- 04.03.2021

Vaishali Kaushik & Anup Kaushik, r/o 42, Bank Vihar, Saraswati Vihar,
Pitampura, Delhi-110034

....COMPLAINANTS

VERSUS

M/s Jindal Realty Pvt Ltd through Director/Authorised Representative, DSM-
648, 6th Floor, DLF Tower, Shivaji Marg, Najafgarh road, Moti Nagar, New
Delhi-110015

....RESPONDENT

Hearing:- 13TH hearing

Present:- Sh. Satish Mishra, Counsel for the complainants

Mr. Anup Kaushik & Ms. Vaishali Kaushik, Complainants through

video conferencing

Sh. Drupad Sangwan, Counsel for the respondent

Sarita Gupta

ORDER:-

Brief facts of the case of the complainants are that:

Complainants had booked unit no. 54-E having area of 1298 sq ft situated in respondent's project-Jindal Global City, Sonipat on 13.10.2011. Builder buyer agreement was executed between the parties on 03.12.2011. The possession was to be delivered to the complainants upto 03.12.2014. They have paid ₹ 58,47,918/- against total sale consideration of ₹ 77,07,304/- . The respondent had offered possession of the unit after delay of more than 4 years on 21.09.2018 without payment of any delay compensation/interest. Said delay has put financial burden upon the complainants as booked unit had been purchased by them by taking loan of ₹ 17,60,000/- from HDFC Bank, New Delhi on 14.07.2018. The respondent has unilaterally increased the area of unit from 1298 sq ft to 1513.87 sq ft. Feeling aggrieved present complaint has been filed by the complainants seeking compensation for delay caused for more than 4 years, compensation on account of facing GST tax regime, to impose penalty on respondent for its unilateral act of increasing the size of the unit without their consent, refund of excess charges collected by respondent on account of electricity, IFMS, water connection charges and compensation of ₹ 5,00,000/- for mental harassment and agony and ₹ 50,000/- as litigation cost.

2. Respondent had appeared and filed reply stating therein that the complainants were duly informed that construction of the unit was started in the

month of September 2015 and prior intimation in this regard was sent to them vide letter dated 20.06.2015. During commencement of construction, respondent had demanded various installments as per the plan adopted by complainants but complainants have defaulted in payment of installments on time. Respondent on considering the requests made by complainants, waived interest of ₹ 4,74,384/- on delayed payment of installments. Benefit of said amount has already been given to the complainants. Thereafter, possession of booked unit was offered to complainants on 16.06.2018 after receiving occupation certificate on 11.06.2018. Complainants after making payment of outstanding amount, have taken possession and got conveyance deed executed on 30.08.2018. The complainants have not disclosed the factum of execution of conveyance deed and indemnity bond cum undertaking accepted by them without any protest in their complaint. Regarding question of delay caused in delivery of possession, it has been stated that the delay in delivery of possession was not deliberate rather it was due to amendments made by Department of Town and Country Planning, Haryana 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 concerned Authority but in vain. At last the issue of amendment was decided by DTCP on 09.02.2015. So, there is no intentional delay on the part of respondent. Respondent had received approval of layout plan on 08.04.2010 and zoning on 21.09.2011 prior to arbitrary revision of sectoral plan. It has further been stated that the complaint is drafted on incorrect interpretation of the Buyer's agreement

because in the agreement there is a clause of 'force majeure' conditions. In case of happening of any of the circumstances beyond the control of the developer, the developer shall not be held responsible for not performing any of his obligations in a timely manner and the developer shall be entitled to reasonable extension of time for performing his part of obligation. Regarding increase in area of the unit, it has been submitted that booked area was tentative in terms of clause 8 (iii) and (iv) of builder buyer agreement dated 03.12.2011 and was subject to $\pm 25\%$ variation. Initially booked area was 1298 sq. ft. and final area being offered to complainants is 1513.84 sq. ft. i.e. increase of 215 sq ft which is within permissible limit as per referred clause of agreement. The residential unit in question is complete and the possession has already been taken by complainants after execution of conveyance deed. Any request for compensation at this stage is not maintainable and would jeopardize the entire project. The respondent has prayed for dismissal of complaint.

3. Arguments raised by both ld. counsel for the parties have been carefully heard alongwith meticulous examination of records of the case.

4. Perusal of file reveals that initially when the complaint was filed, the complainant had sought relief of delay compensation, penalty upon respondent for increase in size of unit, refund of GST charges, excess amount paid on account of electricity, IFMS, water connection, compensation for mental agony and cost of litigation. On 15.10.2019 the complainants had withdrawn the relief of

declaring demands illegal and refund/ waiver of amount which they have already paid to respondent which is apparent from order dated 15.10.2019, passed by the then Id. Adjudicating Officer. Issues with regard to compensation were framed and the complaint relating to remaining relief was dismissed. It has been argued by Id. counsel for complainants that the reliefs other than compensation were withdrawn in pretext of legal complexity prevailing at that time in view of judgement dated 02.05.2019 passed by Hon'ble Real Estate Appellate Tribunal, Chandigarh in Appeal no. 06 of 2018 titled as Sameer Mahawar vs MG Housing Pvt Ltd. He has referred to paragraphs 25,29,31,35,36,42,43,44,46 and 48 stating that power to adjudicate upon interest lies with Adjudicating Officer only.

5. On the other hand, it has been argued by Id. counsel for respondent that initially the complainants had filed complaint seeking delay interest alongwith compensation. On 15.10.2019 counsel for complainants had suffered a statement before the then Id. Adjudicating Officer vide which the reliefs sought by them were limited only to compensation and all other reliefs were given up by complainants. Id. counsel for respondent has argued that once order has been passed for withdrawal of remaining reliefs as per statement of complainants, now the complainant cannot make a request to review it. It has further been argued by Id. counsel for respondent that now the complaint is left seeking compensation only which is not maintainable as the complainants cannot seek compensation without first establishing any violation committed by respondent, the

complainants have not specified any section under which reliefs have been claimed. The complainants have also sought delay compensation alongwith compensation for mental harassment, agony, loss of opportunity under sections 18,19,31 of the RERA Act,2016. For the purpose of adjudication of claim of compensation under section 31 of the Act read with Rules 28 and 29 of the RERA Rules,2017, the claim of compensation can be adjudicated by Id. Adjudicating Officer only after violation of sections 12,14,18 and 19 of the Act has been established. At this stage ,this Court has no jurisdiction to adjudicate the issues involved in the present complaint.

6. It has next been argued by Id. counsel for respondent that the complaint filed by complainants is not maintainable as agreement between the complainants and respondent was entered into on 03.12.2011 and the RERA Act,2016 came into force only in year 2017. The Act cannot be applied retrospectively. It has further been pointed out that the offer of possession was made to the complainants on 16.06.2018 and the sale deed has been executed on 30.08.2018. After execution of conveyance deed , vendees i.e. complainants are left with no claim. The complainants have also signed indemnity bond whereby the complainants have undertaken that no claim would be raised against respondent with regard to any nature in respect of said unit. The complainants have concealed true and material facts from the Court. It has not been brought to notice of Court that indemnity bond has already been executed and respondent has been absolved

from all liabilities. Section 18 of the Act deals with the provision that in case the allottee wishes to withdraw from the project, the promoter shall be liable to return the amount received by him with interest. Since the conveyance deed has already been executed, the complainants are not entitled to this relief also. After execution of conveyance deed, the relationship between the allottee and the developer comes to an end and vendees cannot be called allottees and they are not eligible to raise any claim under RERA Act, 2016 and they have no locus standi.

7. Next argument raised by ld. counsel for respondent is that as per section 71 of the RERA Act, 2016, the complainants have to prove by way of evidence any claim they have asserted. Merely alleging delay in grant of possession of unit does not qualify the complainants for grant of compensation. To establish quantifiable claim, the complainants have not provided any calculation table. Moreover, the period between 2011-2015 has been considered as 'force majeure' by Hon'ble Real Estate Regulatory Authority, Panchkula vide order dated 08.01.2019 in Complaint no. 1048/2018 titled as Nirmala Devi vs Jindal Realty Pvt Ltd. After deducting 'force majeure' period, the deemed date of possession should be considered as 09.02.2018. Offer of possession was given to the complainants on 16.06.2018 i.e. within 5 months of deemed date of possession. The complainants have failed to prove any disproportionate gain/unfair advantage or any quantifiable loss. In the absence of any evidence establishing occurrence of loss, it cannot be presumed that any loss has been suffered by the complainants.

After execution of indemnity bond and conveyance deed, the claims and rights of the complainants have come to an end. Ld. counsel for respondent has prayed for dismissal of complaint.

8. Perusal of file shows that initially complaint was filed by the complainants seeking delay compensation for 4 years in executing the sale deed, compensation on account of GST, imposing penalty upon the respondent for unilaterally increasing size of unit, refund of excess charges and compensation for mental harassment and agony alongwith litigation cost. On 15.10.2019, ld. counsel for the complainants had stated that his complaint shall be considered only with respect to relief of various compensation prayed for and he does not press relief of declaring demands illegal or refund/waiver of amount which the complainants had already paid to the respondent. Vide order of the same date passed by the then ld. Adjudicating Officer, the complaint relating to relief of refund/waiver and declaring the demands as illegal was ordered to be dismissed and after framing of issues the case was adjourned for evidence of complainants with respect to compensation only. Though it is the argument of ld. counsel for complainants that at that time the statement was made by counsel for complainants withdrawing the remaining relief except compensation as there was objection from ld. counsel for respondent regarding maintainability of complaint. Now he wants to claim all the reliefs which were initially sought by the complainants. At this stage, it is pertinent to mention here that if by making a

statement any of the reliefs has been withdrawn by the counsel for the complainants and specific order with regard to withdrawal of relief has been passed by the Court, now it does not lie in the mouth of the complainants that these reliefs are still alive and they can demand those reliefs also. Hence this argument of ld. counsel for complainants is hereby rejected. This order shall be limited to the extent of relief of compensations only.

9. Record shows that the unit was booked by the complainants on 13.10.2011 and builder buyer agreement was executed between the parties on 03.12.2011. Possession was to be delivered to the complainants within 3 years upto 03.12.2014. The offer has been made by the respondent on 16.06.2018. Conveyance deed has been executed on 30.08.2018. It is the arguments of ld. counsel for respondent that after execution of conveyance deed, relationship between the allottee and the promoter comes to an end and the allottees cannot claim any relief including compensation after execution of conveyance deed. Ld. counsel for respondent has drawn attention of the Court towards clause 5 of Conveyance Deed wherein it has been mentioned that the vendees has been left with no claim against the vendors. Ld. counsel for respondent has also drawn the attention of Court towards clause 47 of conveyance deed dated 30.08.2018, in which it has been specifically mentioned that upon possession of said unit being given to vendees, the vendees shall have no claim against the vendor with regard to any item of work, quality of work, materials, installations etc. in the said unit

or any ground whatsoever and all such claims, if any, shall be deemed to have been waived.

10. It has further been argued by learned counsel for respondent that since in the conveyance deed dated 30.08.2018 and indemnity bond, the complainants have agreed that they are left with no claim whatsoever against the respondent, now the present complaint can't be said to be maintainable.

11. At this stage, it is relevant to point out here that in clause 47 of the conveyance deed, the words used are 'the vendee(s) shall have no claim against the vendor with regard to any item of work, quality of work, materials, installations etc...'. Meaning thereby the vendees are left with no claim only with regard to quality of work, item of work, material and installation. At the same time learned counsel for the respondent has also reproduced contents of indemnity bond which are as 'the indemnifiers shall henceforth have no claim against the company of any nature whatsoever in respect of the size, measurement, location, service of the said unit and the indemnifiers shall be fully responsible for the same'. Meaning thereby the vendees are left with no claim with regard to size, measurement, location of the unit. Neither in the conveyance deed nor in the indemnity bond, it has been mentioned that the vendees are left with no right to claim compensation of any type from the promoter. Both the conveyance deed and indemnity bond are specific with regard to size, measurement, location, quality and material of work of the unit. In the present

complaint, the complainants are not putting forward any claim with regard to size, measurement, location, quality and material of work.

12. Moreover, in Civil Appeal no. 6239 of 2019 titled as Wg. Cdr. Arifur Rahman Khan and Ors. Vs. DLF Southern Homes Pvt Ltd and Ors. 2020 (3) RCR (Civil) 544 Hon'ble Apex Court has observed that we are unable to subscribe to the view of the NCDRC that flat purchasers who obtained possession or executed deeds of conveyance have lost their right to make a claim for compensation for the delayed handing over of the flats.

13. In Appeal no. 272, 273, 274 of 2019 titled as Manju Arya vs M/s TDI Infrastructure Pvt Ltd, Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh vide order dated 19.01.2021 has observed that the purchasers will not loose their right to claim for compensation for delayed handing over of possession on the ground that possession has been delivered and conveyance deed has been executed. Section 11(4) of the RERA Act has also been reproduced and discussed in the said judgement by Hon'ble Tribunal and has further observed that 'this provision does not say that the cause of action which had already accrued to the allottee against the promoter due to non-fulfilment of the obligations as per the agreement for sale shall stand extinguished with the execution of the conveyance-deed. Whatever statutory rights had accrued to the allottee prior to the conveyance-deed, cannot be defeated with the subsequent execution and registration of the conveyance -deed'.

14. Hence the argument of learned counsel for the respondent that after execution of conveyance deed and signing of indemnity bond by the complainants, now the complainants are left with no right against the respondent to claim compensation, is ordered to be rejected.

15. Next argument raised by ld. counsel for respondent is that builder buyer agreement was entered into between the parties in the year 2011. RERA Act,2016 had come into operation in the year 2017. Since at the time of execution of builder buyer agreement, RERA Act was not in existence, the complainants cannot file complaint under RERA Act as it has no retrospective application.

16. Though the RERA Act,2016 has come into operation in year 2017 and in the present case builder buyer agreement was executed on 03.12.2011 yet it is pertinent to mention here that in the year 2017 when the RERA Act came into operation the project of the respondent had not been completed and RERA Act,2016 is fully applicable to ongoing projects also. Complainants are within their right to approach RERA Authority for redressal of their grievances. Hence this argument of ld. counsel for respondent is turned down.

17. It has next been argued by ld. counsel for respondent that complainants have intentionally concealed material facts of execution of conveyance deed and indemnity bond. They have not uttered a single word that possession of disputed unit has already taken by them.

18. Admittedly, the complainants have not mentioned in their complaint about execution of conveyance deed and indemnity bond and taking possession of unit, yet it does not materially affect the case of the complainants as they have sought compensation only.

19. Unilateral increase in size of unit without consent of the complainants is another argument of ld. counsel for complainants. Copy of builder buyer agreement dated 03.12.2011, placed on record as Annexure A-1, shows that in clause no. 8(iv) of the said agreement, variation in size to the extent of +/- 25% is admissible at the time of final measurement. Hence, it cannot be said that in increasing the size of unit, there is any default on part of respondent.

20. It has been argued by ld. counsel for the respondent that as per section 72 of RERA Act, 2016 to claim the compensation, the complainants have to prove the amount of disproportionate gain or unfair advantage by the respondent, amount of loss caused to the complainants and the repetitive nature of the default. In the present case, the complainants have neither proved unfair advantage or disproportionate gain enjoyed by respondent or loss caused to them and the complainants have also not placed on record any calculation sheet. Moreover, complainants had defaulted in payment of installments and a rebate of ₹ 4,74,384/- was given by the respondent to the complainants at the time of final payment when conveyance deed was to be executed.

21. Section 71 (3) of the RERA Act reads as:

“While holding an inquiry the Adjudicating Officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the Adjudicating Officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such **compensation or interest**, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.”

While adjudging compensation to be paid to the complainant factors enumerated in section 72 of the RERA Act are to be taken into consideration. Section 72 of the RERA Act is reproduced as :

“While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:—

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.”

22. As per record, the complainants had paid ₹16,63,255/- on 08.06.2011 and ₹ 11,00,000/- (₹ 5,00,000/- + ₹ 3,00,000/- + ₹ 3,00,000/-) on 07.02.2012. As per Complaint no. 1048/2018 titled as Nirmala Devi vs Jindal Realty Pvt Ltd Hon'ble

Authority has declared period from 04.11.2011 to 09.02.2015 as 'force majeure'.

A sum of ₹ 16,63,255/- was deposited by the complainants before the period of force majeure and amount of ₹ 11,00,000/- (₹ 5,00,000/- + ₹ 3,00,000/- + ₹ 3,00,000/-) was taken by the respondent during force majeure period, even if the construction was not going on in the project of the respondent. In this manner, the amount of ₹ 16,63,255/- taken by the respondent from the complainants in the year June 2011 was utilised by the respondent. In the same manner, the amount of ₹ 11,00,000/- which was taken by the respondent from the complainants was not spent on construction of the unit rather it was also utilised by the respondent to his unfair advantage. The utilization of the amount of ₹ 16,63,255/- since 2011 and ₹ 11,00,000/- since 2012 can be termed as disproportionate gain to the respondent which has caused mental pain and agony and harassment to the complainants. The compensation is quantifiable and it would be appropriate if amount of compensation is calculated @6% per annum.

23. It has been argued by ld. counsel for the respondent that a sum of ₹ 4,74,384/- was waived by the respondent towards the complainants because of delayed payment of instalments which has been admitted by the complainants in Statement of Accounts dated 16.07.2018 annexed as Annexure A-2. Admittedly rebate of ₹ 4,74,383/- has been given by the respondent to complainants for delayed payment of instalments, yet at this stage it is pertinent to mention here that as per builder buyer agreement dated 03.12.2011 Exhibit A-1 in case of

default in payment of instalment, interest would be charged @18% per annum. On the other hand, in the preceding paragraphs, the compensation to the complainants is being awarded at 6% per annum. It would be in the interest of both the parties that 1/3rd of the amount of ₹ 4,74,384/- i.e. ₹ 1,58,128/- is to be deducted from the amount of compensation to be paid to the complainants.

24. As per Statement of Account dated 16.07.2018 total amount of ₹ 32,10,597/- was paid by the complainants after 09.02.2015 when force majeure period was over. Details of said amount are depicted below:-

Sr. No.	Amount	Date of payment
1.	₹ 7,56,667/-	23.10.2015
2.	₹ 35,934/-	08.03.2017
3.	₹ 20,00,000/-	12.07.2017
4.	₹ 1,42,791/-	16.06.2018
5.	₹ 1,85,205/-	21.06.2018
6.	₹ 90,000/-	29.06.2018
	Total= ₹ 32,10,597/-	

25. As per Annexure R-3, offer of possession was given to the complainants on 16.06.2018. It is worthwhile to mention here that period of force majeure had come to an end and construction had been started in the year 2015. Amount of ₹ 7,56,667 + 35,934 + 20,00,000/- was utilised by the respondent for construction

of the unit. Amount of ₹ 1,42,791/- was deposited by the complainants at the time of offer of possession. Remaining amount of ₹ 1,85,205/- + ₹ 90,000/- was paid by the complainants on 21.06.2018 and 29.06.2018 respectively at the time of execution of conveyance deed. Resultantly no compensation is being awarded on the amount deposited after 'force majeure' period was over and the amount deposited at the time of execution of conveyance deed.

26. Resultantly, the calculation of compensation is as under:-

Sr. No.	Amount	Time period	Rate of interest	Compensation Amount (in ₹)
1.	16,63,255/-	08.06.2011 to 09.02.2015	6%	3,66,919/-
2.	11,00,000/-	07.02.2012 to 09.02.2015	6%	1,98,543/-
Total	₹ 27,63,255/-			Total= ₹ 5,65,462/-

27. In view of foregoing discussion, the present complaint is allowed. The complainants are also awarded ₹20,000/- as litigation cost. Respondent is directed to pay an amount of ₹ 4,27,334/- [₹ 5,65,462 + ₹20,000 (litigation cost) - ₹


1,58,128(as per paragraph 23)] (rupees four lakhs twenty seven thousand three hundred thirty four only). The amount shall be paid in two instalments meaning thereby first instalment of 50% of amount shall be paid within 45 days of uploading of this order and remaining amount to be paid as second instalment within next 45 days.

28. In these terms, the present complaint stands disposed of. After uploading, file be consigned to record room.

04.03.2021


Dr. Sarita Gupta
[Adjudicating Officer]

Note: This order contains 18 pages. All the pages have been checked and signed by me.


Dr. Sarita Gupta
[Adjudicating Officer]