



**HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA**

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

**BEFORE THE ADJUDICATING OFFICER**

**Complaint No. -1197 of 2019**

**Date of Institution: -29.05.2019**

**Date of Decision: - 17.03.2021**

Charanjit Singh s/o Sh. Harbans Singh r/o B-603, 6<sup>th</sup> Floor, HI Flats, Rohini,  
Pralhadpur Bangar, North West Delhi-110042.

....COMPLAINANT

VERSUS

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

....RESPONDENT

**Hearing:- 16<sup>th</sup>**

**Present:-** Sh. Satish Mishra, Counsel for the complainant

Sh. Drupad Sangwan, Counsel for the respondent through VC

Satish Mishra

**ORDER:-**

Brief facts of the complainant's case are that:

Sh. Vikas and Sh. Surendra Jain, the original allottees had booked villa/unit no. E-67 having area of 1448 sq ft situated in respondent's project- Jindal Global City, Sonipat. Builder buyer agreement was executed between the original allottees and respondent-developer on 26.12.2011. The original allottees had paid amount of ₹ 22,20,466/- to the respondent till 19.08.2011. The present complainant and his father Sh. Harbans Singh (co-allotee) had purchased the booked villa from the original allottees on 30.12.2011. Amount of ₹ 22,20,466/- initially paid by the original allottee was endorsed in favor of complainant and his father. The possession of villa was to be delivered to the complainant and his father upto 26.12.2014. Upto 29.12.2018 the complainant and his father had paid on amount of ₹ 70,90,706/- including the amount of ₹ 22,20,466/- paid by the original allottee against total sale consideration of ₹ 89,99,279/-. The respondent had offered possession of the villa after delay of more than 4 years on 09.03.2019 without payment of any delay compensation/interest. The respondent has unilaterally increased the area of unit from 1448 sq. ft. to 1810.72 sq. ft. without any intimation or consent of the complainant. Said increase has put financial burden of ₹ 14,82,066/- upon the complainant and in order to sort out the issue of increase of 362.72 sq. ft. in the area of the unit, an email was sent by the complainant on 08.04.2019. Respondent in response to it has sent an email dated

09.04.2019 whereby an offer of downgrading the complainant to a smaller size unit bearing no. C-74 was given. It has been alleged that after reaching at consensus to downgrade of booked unit E-67 to C-74 the respondent has stepped back and did not finalise the offer of downgrading the unit.

2. Feeling aggrieved present complaint has been filed by the complainant, as his father, who was co-allottee had already died. By way of the present complaint, the complainant has sought compensation for delay caused for more than 4 years in offering possession of unit, to allow the complainant to downgrade from villa E-67 to unit C-74 at ₹ 5,05,484/- in terms of email annexed as Annexure A-4, to impose penalty on respondent for its unilateral act of increasing the size of the unit without consent of complainant, refund of excess charges collected by respondent on account of electricity, IFMS, water connection charges, legal fees, PNG gas service, club charges and to charge interest on delayed payments @9% only and not 18% and compensation of ₹ 5,00,000/- for harassment, mental pain, agony and loss of opportunity and ₹ 50,000/- as litigation cost. In alternate, it has been prayed that respondent be directed to provide possession of the unit no. C-74 free from all defects as discussed from time to time in email communications.

3. Respondent had appeared and filed reply stating therein that the complainant was duly informed that construction of the unit was started in the month of September 2015 and prior intimation in this regard was sent to the complainant

vide letter dated 20.06.2015. After commencement of construction, respondent had demanded various installments as per the plan adopted by complainant but complainant has defaulted in payment of installments on time. Respondent on considering the requests made by complainant, waived interest of ₹ 12,063/- on delayed payment of installments. Benefit of said amount has already been given to the complainant. Thereafter, possession of booked unit was offered to complainant on 09.03.2019 alongwith demand of due amount of ₹ 27,00,992/- after receiving occupation certificate on 22.01.2019. 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. The complaint is drafted on incorrect interpretation of the buyer's agreement as 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 26.12.2011 and was subject to  $\pm 25\%$  variation. Initially booked area was 1448 sq. ft. and final area being offered to complainant is 1810 sq. ft. i.e. increase of 362 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 offered to the complainant. Any request for compensation at this stage is not maintainable and would jeopardize the entire project.

4. Regarding swapping/downgrading the unit from E-67 to C-74, it has been submitted that only cost of alternate unit C-74 was shared with the complainant upon his request. Said unit was neither offered for allotment nor swapped with the complainant till date.

5. Record reveals that the present complaint has been filed by the complainant on 29.05.2019 seeking relief of compensation as per provisions of RERA Act, 2016 (SBI MCLR+2%) for delay for more than 4 years complainant be allowed to downgrade the unit from E-67 to C-74 at ₹ 5,05,484/-, penalty be imposed on the respondent for causing delay of more than 4 years for contravention of provisions of RERA Act, 2016 and increase in size of unit without consent of the allottees, compensation for harassment, mental pain and agony, loss of opportunity, litigation cost, alternate relief of possession of unit C-74, direction be issued to respondent to collect reasonable charges on account of electricity, IFMS, water connection charges, legal fees, PNG gas service, club

charges, interest on delayed payment @9% per annum instead of 18% per annum.

At this stage, it is pertinent to mention here that after filing of the present complaint on 29.05.2019, Complaint no. 170/2020 seeking the same reliefs had also been filed by the complainant against the respondent. Vide order dated 18.08.2020 passed by Hon'ble Haryana Real Estate Regulatory Authority, Panchkula it has been observed that the issues involved in the complaint (pending before Authority) are already sub-judice before the Court of Adjudicating Officer. The complainant cannot approach both the institutes at the same time. Complaint no. 170/2020 was observed to be not maintainable. However, liberty was given to approach that forum again after removing legal defects.

6. The complainant has sought relief directing the respondent to downgrade the unit from E-67 to C-74 at ₹ 5,05,484/-. Ld. counsel for the complainant has drawn attention of the Court towards email dated 08.04.2019 placed on record as Annexure A-4 in which the complainant has mentioned that he had received the possession letter in third week of March, 2019. On 06.04.2019 he had visited the office of respondent. He was also intimated that the plot size of his villa and covered area have been increased and resultantly total value of villa has been increased by 40% and demand of more than ₹ 15 lakh raised by respondent was beyond financial capability of complainant. Some representative of respondent company has provided information to complainant regarding another smaller villa no. C-74 and informed him that cost sheet of smaller villa would be provided to

him. The complainant had requested to expedite the process of providing costing sheet and to resolving the issue of increase in size of villa and delay penalty charges. In response to the email sent by the complainant, respondent had sent costing of villa C-74 vide email dated 09.04.2019. Meetings and oral discussions between the complainant and representative of respondent company had taken place. As per version of complainant, for villa no. C-74 demand of ₹ 5,05,484/- was raised by respondent. Vide email dated 01.05.2019, copy of which has been placed on record as Annexure A-4, the complainant has agreed to take villa C-74 and was also ready to pay additional amount of ₹ 5,05,484/-. As per allegation of complainant, the respondent had not finalized the allotment of C-74 to the complainant even on payment of ₹ 5,05,484/-. On the other hand, it is the argument of ld. counsel for respondent that only costing was provided to the complainant and there was no agreement to allot villa no. C-74 to the complainant.

7. The complainant has also sought alternate relief of possession of unit no. C-74. Since neither the possession of unit no. E-67 was taken by the complainant nor possession of alternate unit no. C-74 was given by the respondent even after taking ₹ 70,90,706/- from the complainant, by way of present complaint, the complainant has sought relief directing the respondent to give possession of alternate unit no. C-74 to the complainant on payment of ₹ 5,05,484/-. It is worthwhile to point it out here that for relief of possession, the complainant was

required to file the complaint before Hon'ble Authority. Though complaint no. 170/2020 was filed before Hon'ble Authority, yet in that complaint the same reliefs had been claimed by the complainant, which have been claimed in the present complaint. The counsel for the complainant was having opportunity to withdraw remaining reliefs and press for relief of possession before Hon'ble Authority. Since neither relief of possession had been withdrawn before Court of Adjudicating Officer nor remaining reliefs were withdrawn before Hon'ble Authority, complaint no.170/2020 filed by the complainant was dismissed by Hon'ble Authority on the ground that the complaint filed before Adjudicating Officer was prior in time and in both the complaints, the reliefs claimed are same, the complaint filed later in time could not proceed without removing legal defects. Though opportunity was given to the complainant to knock door of Hon'ble Authority again after removing legal defects yet complainant did not avail this opportunity. It is hereby observed that for seeking relief of possession, the complaint has to be filed before Hon'ble Authority.

8. The complainant has also claimed relief issuing directions against the respondent to collect reasonable charges on account electricity, IFMS, water connection charges, legal fees , PNG gas service and club charges. It is relevant to mention here that all these reliefs are connected with possession. Since in the foregoing paragraphs, it has been observed that complainant has to approach



Hon'ble Authority for relief of possession, this relief would also be claimed along with relief of possession before Hon'ble Authority.

9. The complainant has also sought relief that he be compensated as per provisions of RERA Act,2019 i.e. SBI MCLR+2% for delay period of 4 years. It is also relevant to mention here that to claim delay interest at the rate SBI MCLR+2%, the complainant has to approach Hon'ble Authority along with relief of possession and other charges.

10. The complainant has also sought to impose penalty on the respondent for causing delay of more than 4 years and contravening settled provisions of RERA Act,2016 and also for altering the size of unit without consent of allottees or without informing the allottees.

11. In the foregoing paragraphs, it has been observed that period from 04.11.2011 to 09.02.2015 was declared 'force majeure'. Accordingly, the deemed date of possession comes to 09.02.2018 and offer of possession was made by the respondent on 09.03.2019 i.e. after delay of one year and one month. It has already been observed in foregoing paragraphs that for claiming delay interest at SBI MCLR plus 2%, the complainant is to approach Hon'ble Authority. The next ground for imposing penalty has been taken by the complainant as contravention of settled provisions of RERA Act,2016. At this stage, it is relevant to mention here that no section/ provision has been referred by complainant for violation of which penalty is sought to be imposed upon the respondent. The third ground

taken by the complainant for imposition of penalty upon respondent is altering the size of unit without consent of allottees or without informing them. It has also been observed in the foregoing paragraphs that in builder buyer agreement dated 26.12.2011 placed on record as Annexure A-1, clause 8 (iv) says that variation in size to the extent of + - 25% is admissible at the time of final measurement. It can be said that at the time of entering into builder buyer agreement, the allottee had agreed to increase/ decrease to the extent of 25%. Now the complainant cannot say that size of unit has been altered without his consent.

12. Section 61 of RERA Act, 2016 deals with penalty for contravention of provisions other than provided under Section 3 or Section 4 or Rules or Regulations made under the Act. Section 61 of RERA Act, 2016 is reproduced below :-

*“Penalty for contravention of other provisions of this Act- If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4 , or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five percent of the estimated cos of the real estate project as determined by the Authority”*

In the said section, it has nowhere been provided that penalty is to be determined by the Adjudicating Officer. In the absence of any specific provision with regard to imposition of penalty by Adjudicating Officer, this relief cannot be granted to the complainant.

13. Though it has been argued by learned counsel for respondent that initially there were 2 allottees viz. the present complainant Sh. Charanjit Singh and his father Sh. Harbans Singh before filing of complaint, Sh. Harbans Singh co-allottee had died but his legal representatives have not been brought on the record, yet it is pertinent to mention here that even if after the death of co-allottee, his legal representatives have not been impleaded, conveyance deed can be executed in favour of surviving allottee.

14. It has further been argued by ld. counsel for respondent that now the complaint is left seeking compensation only which is not maintainable as the complainant cannot seek compensation without first establishing any violation committed by respondent, the complainant has not specified any section under which reliefs have been claimed. The complainant has 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 ld. 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.

15. Next argument raised by ld. counsel for respondent is that as per section 71 of the RERA Act,2016, the complainant has to prove by way of evidence any

claim he has asserted. Merely alleging delay in offer of possession of unit does not qualify the complainant for grant of compensation. To establish quantifiable claim, the complainant has 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 would be considered as 09.02.2018. Offer of possession was given to the complainant on 09.03.2019 i.e. after 1 year and 1 month of deemed date of possession.

16. Next argument raised by ld. counsel for respondent is that builder buyer agreement was entered into between the parties on 26.12.2011 and 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 complainant cannot file complaint under RERA Act as it has no retrospective application.

17. Though the RERA Act,2016 has come into operation in year 2017 and in the present case builder buyer agreement was executed on 26.12.2011 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. Complainant is within his right to approach RERA Authority for redressal of his grievances. Hence this argument of ld. counsel for respondent is turned down.

18. It has been argued by Id. counsel for the respondent that as per section 72 of RERA Act,2016 to claim the compensation, the complainant has to prove the amount of disproportionate gain or unfair advantage by the respondent, amount of loss caused to the complainant and the repetitive nature of the default. In the present case, the complainant has neither proved unfair advantage or disproportionate gain enjoyed by respondent or loss caused to him and the complainant has also not placed on record any calculation sheet.

19. 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.”

20. As per record, the complainant had paid ₹ 6,80,000/- (₹3,40,000/- + ₹ 3,40,000/-) on 19.02.2011, ₹9,10,237/- (₹15,518/- + ₹ 3,84,482/- + ₹ 5,10,237/-) on 11.05.2011, ₹2,50,000/- on 19.07.2011 , ₹4,45,396/- (₹3,45,396/- + ₹ 1,00,000/-) on 19.08.2011 and ₹ 69,984/- (₹30,000/- + ₹ 19,992/- + ₹ 19,992/-) on 23.12.2011. 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 ₹ 22,85,633/- (₹6,80,000 + ₹9,10,237 + ₹2,50,000 + ₹4,45,396 ) was deposited by the complainants before period of force majeure and amount of ₹ 69,984/- 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 ₹ 22,85,633/- taken by the respondent from the complainant in the year 2011 was utilised by the respondent. In the same manner, the amount of ₹ 69,984/- which was taken by the respondent from the complainant 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 ₹ 22,85,633/- since receipt of respective payments in year 2011 and ₹ 69,984/- since December 2011 can be termed as disproportionate gain to the respondent which has caused mental pain and agony and harassment to the complainant. At this stage, it is also worthwhile to point it out here that after taking occupation

certificate by the respondent on 22.01.2019, offer of possession was made by the respondent to the complainant on 09.03.2019, for the first time intimating that area of the unit has been increased from 1448 sq .ft. to 1810 sq. ft. and additional amount of ₹ 14,82,066/- was demanded by the respondent from the complainant. As mentioned earlier, on 08.04.2019 email was sent by the complainant to the respondent intimating that the amount increased was beyond his paying capacity. After visit to the office of respondent and after few conversations and negotiations the complainant had agreed to take smaller unit C- 74 even on payment of ₹ 5,05,484/-. At the time of filing of written statement, it has very conveniently been stated by the respondent that it was not finalised to offer possession of C-74, alternate unit in place of E- 67. After that 2 more years have also been passed. Neither the complainant could get possession of any unit even after making payment of ₹ 70,90,706/-. It is not understandable why serious efforts were not made on behalf of representative of respondent when the complainant was ready to take smaller unit after payment of ₹ 5,05,484/- extra and that too after 9 years of long wait. It has caused much mental pain and agony and harassment to the complainant. The compensation is quantifiable and it would be appropriate if amount of compensation is calculated @6% per annum.

21. It has been argued by ld. counsel for the respondent that a sum of ₹ 12,063/- was waived by the respondent towards the complainant because of delayed payment of instalments which has been admitted by the complainant in Statement

of Accounts dated 13.03.2019. Admittedly rebate of ₹ 12,063/- has been given by the respondent to complainant for delayed payment of instalments, yet at this stage it is pertinent to mention here that as per builder buyer agreement dated 26.12.2011 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 complainant is being awarded at 6% per annum. It would be in the interest of both the parties that 1/3rd of the amount of ₹ 12,063/- i.e. ₹ 4,021/- is to be deducted from the amount of compensation to be paid to the complainant.

22. As per Statement of Account dated 13.03.2019 total amount of ₹ 48,05,073/- was paid by the complainant after 09.02.2015 when force majeure period was over. Details of said amount are depicted below:-

Sr. No.	Amount	Date of payment
1.	₹ 7,03,697/-	31.12.2015
2.	₹ 7,04,547/-	14.04.2016
3.	₹ 7,10,496/-	01.08.2016
4.	₹ 7,10,496/-	28.09.2016
5.	₹ 5,32,872/-	26.10.2016
6.	₹ 5,90,095/-	07.04.2017
7.	₹ 7,61,488/-	28.12.2018
8.	₹ 90,012/-	09.03.2018



9.	₹ 1370/-	13.03.2019
	Total= ₹ 48,05,073/-	

23. As per Annexure R-3, offer of possession was given to the complainants on 09.03.2019. 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 ₹ 48,05,073/- was utilised by the respondent for construction of the unit. Resultantly no compensation is being awarded on the amount deposited after 'force majeure' period was over.

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

Sr. No.	Amount (in ₹)	Time period	Rate of interest	Compensation Amount (in ₹)
1.	6,80,000/-	19.02.2011 to 09.02.2015	6%	1,62,194/-
2.	9,10,237/-	11.05.2011 to 09.02.2015	6%	2,04,991/-
3.	2,50,000/-	19.07.2011 to	6%	53,466/-

		09.02.2015		
4.	4,45,396	19.08.2011 to 09.02.2015	6%	92,984/-
5.	69,984	23.12.2011 to 09.02.2015	6%	13,161/-
Total	₹ 23,55,617/-			Total= ₹ 5,26,796/-

25. In accordance with paragraphs 21 and 24 the compensation payable by respondent to complainant comes to ₹ 5,22,775/- (5,26,796 – 4,021). Though the compensation to be paid to the complainant comes to ₹ 5,22,775/-, yet at this stage, it is worthwhile to point it out here that in the relief clause the complainant has sought compensation upto ₹ 5,00,000/- for mental pain, agony, harassment and loss of opportunity. The complainant cannot be said to be entitled to more than relief claimed. Hence, the compensation to be paid to the complainant under head of mental pain, agony, harassment and loss of opportunity is restricted to ₹ 5,00,000/-. The complainant is also awarded ₹20,000/- as litigation cost. Accordingly, respondent is directed to pay an amount of ₹ 5,20,000/- (5,00,000 + 20,000) (rupees five lakhs twenty thousand 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.

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

*Sarita Gupta*  
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**Dr. Sarita Gupta**  
[Adjudicating Officer]

17.03.2021

Note: This order contains 19 pages. All the pages have been checked and signed by me.

*Sarita Gupta*  
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**Dr. Sarita Gupta**  
[Adjudicating Officer]

