



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No. - 3043 of 2019

Date of Institution:-18.12.2019

Date of Decision:- 31.03.2021

Agarwal Agencies Pvt. Ltd. , D-16/2-3, Okhla Industrial Area, Phase-I, New
Delhi-110020COMPLAINANT

VERSUS

T G Buildwell Pvt. Ltd. , Tivoli Garden Hotel, Chhattarpur Mandir road, New
Delhi-110030 ...RESPONDENT

Hearing: 15th

Present: Shri Rakesh Agarwal, Complainant through video
conferencing
Shri Anand Dubey, Counsel for the complainant through video
conferencing
Shri Akshat Mittal, Counsel for the respondent
Shri Amit Sharma, Legal Manager of respondent company

JUDGEMENT:

The brief facts culminating into the institution of the present complaint
are as:

The complainant is a duly incorporated company having Mr. Rakesh
Aggarwal as its Director. Respondent no. 1, being company, proposed to

develop residential apartment namely 'Tivoli Holiday Village' at Dharuhera, Tehsil & District Rewari, Haryana. The complainant company booked a residential unit in the said project against down payment plan. The total cost of residential unit was ₹ 62,00,000/- out of which the complainant has paid ₹ 16,00,000/- (₹ 11,00,000/- vide cheque dated 13.12.2007 & ₹ 5,00,000 vide cheque dated 19.04.2008). Even after passing of 12 years, there is no construction work in the tower in which the flat was allotted to the complainant. The complainant had also filed complaint under section 200 CrPC which is pending before Id. Metropolitan Magistrate, Saket, Delhi. One complaint was initially filed before RERA Authority which was later on transferred to the Court of Id Adjudicating Officer, HRERA, Panchkula. By way of the present complaint, the complainant has sought compensation in the form of interest on the amount paid to the respondent, which comes to ₹ 1,47,92,484/- and damages of equal amount, total of which comes to ₹ 2,95,84,964/-.

2. Respondent had appeared and filed short reply to the complaint submitting that the complaint is not maintainable before Adjudicating Officer as the complainant is seeking interest for delay. Jurisdiction over the cases pertaining to interest for delay in possession vests with Hon'ble Authority. Original Complaint no. 51 of 2019 was filed by the complainant before Hon'ble Authority praying for refund, which was decided vide order dated

13.02.2019. The respondent had filed appeal against order dated 13.02.2019 passed by Hon'ble Authority which has been set aside by Hon'ble Tribunal vide order dated 16.08.2019 and the case was remanded to the Court of Adjudicating Officer. Complaint no. 51 of 2019 is still subjudice before Adjudicating Officer in which the complainant is praying for refund. When complaint is already pending in which refund has been sought, the present complaint has been filed on the same facts where relief of interest for delay has been sought. Even after setting aside order dated 13.02.2019 passed by Hon'ble Authority, the complainant insisted for execution of order in Complaint no 51 of 2019. The complainant had moved execution petition bearing no 1407 of 2019 for execution of order in complaint no. 51 of 2019 and was contesting the same even after the order sought to be executed had been set aside. Vide order dated 19.12.2019, Hon'ble Authority had dismissed the execution petition. Criminal proceedings are also pending before appropriate Authority. The present complaint is an illegal effort on the part of the complainant company trying to engage the respondent in multifarious litigations. The complainant has clandestinely twisted the facts. No reference has been made with regard to pendency of earlier complaint. It is an attempt on the part of complainant to mislead the Court and conceal the most material and vital facts. The respondent has prayed for dismissal of the complaint.

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3. On 29.10.2020 ld. counsel for the complainant had withdrawn relief no. 1 i. e relief for interest on the amount paid to the respondent. He had further stated that he would continue with the relief of compensation.

4. The complainant had filed rejoinder to reply filed by the respondent submitting that the complainant had withdrawn relief demanding interest on the amount paid to the respondent which is apparent from order dated 29.10.2020 in the present case. It is also within the knowledge of the respondent. After withdrawing relief of interest, the present complaint is limited to damages only and Adjudicating Officer is competent to decide the same. Complaint no 51 of 2019 was filed before Hon'ble Authority seeking possession of residential unit. The representative of the respondent had appeared and shown inability of the respondent to give possession in future also as not even a single brick was placed in the allotted tower of the complainant and it was the respondent who had offered refund of the paid amount. The respondent is enjoying hard earned money of the complainant for the last 14 years. It is not the case of the respondent that the project got delayed due to 'force majeure' but the project got delayed because the respondent had siphoned the money from the project. It has been denied that the complainant was having any malafide intention in filing execution petition no 1407 of 2019 and complaint no 51 of 2019. It is the respondent who is committing violation of civil and criminal cases and misappropriating hard earned money of thousands of home buyers including the

complainant. Several complaints, cases, FIRs are pending before different Courts and police stations against the respondent and its directors. Execution petition in complaint no 1407 of 2019 was withdrawn by the complainant after decision of appeal against order of Hon'ble Authority in complaint no. 51 of 2019. Complaint u/sec 200 CrPC is not a claim for money recovery. Rather, it is a provision to punish the wrong doers. There is no bar in RERA Act to file any criminal complaint against culprit builders. There is no concealment of facts. The complainant has approached this Court with clean hands. The complainant has reiterated the prayer for compensation/ damages.

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

6. To begin with, it has been argued by ld. counsel for the complainant that the complainant company had booked a residential unit in the project " Tivoli Holiday village" at Dharuhera, Tehsil and District, Rewari on payment of ₹ 16,00,000/- out of ₹ 62,00,000/- the total sale consideration of the residential unit. As per terms and conditions of Apartment Buyer's Agreement, the possession of residential unit was to be handed over within 30 months from the date of start of construction. Even after passing of 14 years, construction has not been started. By way of present complaint, the complainant has sought compensation.

7. To rebut the arguments of learned counsel for the complainant, it has been argued by learned counsel for the respondent that the complaint is not maintainable in the present form, the complainant has demanded interest for delay, which is not the jurisdiction of Court of Adjudicating Officer, the complainant company is habitual litigant and has filed a number of complaints against different promoters including the present respondent. The complainant company has not applied the unit for the purpose of residence. Rather residential unit in "Tivoli Holiday Village" at Dharuhera, was booked by the complainant for investment purposes only. It is apparent from a number of complaints filed by the complainant company against different builders. If the unit was to be booked for residential purposes, there was no need with the complainant company to book units in several projects. There is no bonafide of the complainant company and in all the complaints against different builders, it is the company who has filed complaints. Since the complainant company has not booked the present unit also for residential purposes, it cannot be termed as allottee so as to come under the definition of RERA Act. In a complaint before Consumer Disputes Redressal Forum-X, Delhi, complainant company was not considered as a consumer. In a complaint filed by it under section 156(3) Cr. P.C, FIR was not lodged against the present respondent and complaint was ordered to be dismissed by the Court of Id. Metropolitan Magistrate, Saket, New Delhi. Revision against said order was also dismissed.

8. It has further been argued by learned counsel for the respondent that possession of residential unit was to be given to the complainant within 30 months of start of construction. Since construction had not been started, possession of residential unit could not be offered to the complainant. The complainant had earlier filed Complaint no. 51 of 2019 before Hon'ble Authority. It was decided vide order dated 13.02.2019. Appeal against the said order was filed and Hon'ble Appellate Tribunal, Chandigarh has set aside order dated 13.02.2019 passed by Hon'ble Authority and case was remanded back to the Court of Adjudicating Officer. The complainant had intentionally filed Execution complaint no. 1407 of 2019 for execution of order dated 13.02.2019 passed by Hon'ble Authority which was later on withdrawn. Learned counsel for the respondent has prayed for dismissal of the complaint.

8. Now taking the arguments of learned counsel for the complainant and for the respondent one by one.

9. The first argument raised by ld. counsel for the respondent is with regard to non maintainability of the present complaint. The first ground taken by ld. counsel for the respondent is that the complainant is seeking interest for delay for which the jurisdiction vests with Hon'ble Authority. It is pertinent to mention here that vide statement dated 29.10.2020 ld. counsel for the complainant had withdrawn relief for interest on the amount paid to the respondent. He had further stated that he would continue with the relief of

compensation. When the relief of interest has already been withdrawn from the present complaint, this objection of ld. counsel for the respondent with regard to non maintainability of the complaint before this Court is turned down.

10. Next argument raised by ld. counsel for the respondent with regard to non-maintainability of complaint is that the complainant is not an individual rather it is a private limited company incorporated under the Companies Act. The complainant company has not booked the unit in the project of the respondent for residential purposes. Rather it was booked with the purpose of investment only. The complainant is a habitual litigant and has filed various complaints against different builders. Learned counsel for the respondent has drawn attention of the Court towards copies of orders passed by different Authorities in a number of complaints filed by the complainant company against different developers. Learned counsel for respondent has placed on record Annexure R-A in which 35 complaints including the present complaint, have been shown in tabular format. He has also placed on record copies of case proceedings of different complaints filed by Aggarwal Agencies, the present complainant against M/s Delhi Apartments Pvt. Ltd & anr., Jaiprakash Associates Ltd & anr., M/s Advant India IT Parks Pvt Ltd. & anr. & M/s Bhasin Infotech & Infrastructure & anr. He has also placed on record the case details of execution titled as M/s Aggarwal Agencies Pvt Ltd Vs M/s Hapag-Lloyd India Pvt. Ltd. and other complaints titled as M/s Aggarwal Agencies Vs Vijaya

Bank, M/s Aggarwal Agencies Vs M/s Jai Tokh Ram Paper Job Works, M/s Aggarwal Agencies Vs M/s Bhasin Infotech & Infrastructure & anr, M/s Aggarwal Agencies Pvt Ltd Vs The NCT of Delhi, M/s Aggarwal Agencies Pvt Ltd M/s Aggarwal Agencies Pvt Ltd Vs T. G BuildWell Pvt Ltd, M/s Aggarwal Agencies Pvt Ltd Vs Rama Palaces and Resort Pvt Ltd, M/s Aggarwal Agencies Pvt Ltd Vs M/s ABW Infrastructure Ltd. , M/s Aggarwal Agencies Pvt Ltd Vs M/s Niyogi Offset Pvt Ltd & anr. It has also been pointed out by Id. counsel for the respondent that in complaint case number CC/102/2016, it has been observed by Id. Consumer Dispute Redressal Forum-X, NCT, Delhi that the complainant was not a consumer. It has been argued by Id. counsel for the respondent that in the present case also the complainant is not an allottee and cannot avail his legal remedy under RERA Act.

11. It has also been argued by Id. counsel for the respondent that the complainant company has left no stone unturned to drag the respondent in various civil as well as criminal litigations. He has drawn attention of the Court towards case details of Complaint case no 636170 of 2016 before Chief Metropolitan Magistrate, South East, Saket titled as Aggarwal Agencies Pvt Ltd. Vs M/s T. G Buildwell Pvt Ltd. & ors. and copy of order dated 08.02.2017 passed by Id. Metropolitan Magistrate, Saket, New Delhi in application under section 156(3) Cr. P.C against the respondent to summon the respondent under section 200 Cr. P.C, vide which application under section 156(3) Cr.P.C was

ordered to be dismissed, copy of which has been placed on record as Annexure R-E. Criminal revision was filed by the complainant, which was also ordered to be dismissed by Id. Additional Sessions Judge , Saket vide order dated 15.01.2018.

12. It is not disputed that the complainant is a company incorporated under the Companies Act. It had booked residential unit in the year 2007. It is neither apparent from the complaint nor from any document placed on record by Id. counsel for the respondent showing that the residential unit has been booked for investment purposes instead of residential purposes. Moreover there is no Regulation of the RERA Act that the unit must have been booked for residential purposes only. At the time of raising the argument, Id. counsel for the respondent has not shown any provision where this is pre-requisite for filing complaint before RERA Authority. Hence this argument of Id counsel for the respondent is turned down.

13. With regard to filing of the present complaint by a company incorporated under the Companies Act, Id. counsel for the respondent has failed to show any provision of RERA Act which shows that only an individual can file complaint before RERA Authority. If a company is aggrieved, it has right to pursue its legal remedy before any Court of law. This argument of Id. counsel for the respondent is not acceded to.

14. So far as filing of a number of complaints against promoters pending before various other Authorities is concerned, it is worthwhile to mention here that if the other developers have also breached the contract/ agreement with the complainant company, the complainant company has every right to move against defaulting developers to take recourse of law. The complainant company cannot be stopped to avail its legal remedy before any Court of law.

15. Even if application filed by the complainant company under section 156 (3) Cr.P.C for registration of FIR against promoter/ respondent is dismissed, it does not mean that the complainant company is estopped from filing complaint before RERA Authority. At the same time if Consumer Disputes Redressal Forum-X, New Delhi has observed that the complainant company is not a consumer even then it has also been observed that the complainant company is not debarred from seeking remedy before appropriate Forum. It does not mean that the doors of all the Courts are shut for the complainant company. Every Forum has its own definition to cover the case of either the complainant or the consumer or the petitioner. Neither because of dismissal of application under section 156(3) Cr.P.C nor observation of Consumer Forum that the complainant is not a consumer, the present complaint filed by the complainant company cannot be said to be non-maintainable. These arguments raised by learned counsel for the respondent with regard to non maintainability of the present complaint are also rejected.

16. The next ground taken by ld. counsel for the respondent for non maintainability of the present complaint before this Court is that the complainant has intentionally concealed the pendency of Complaint no. 51 of 2019 before this Court.

17. Perusal of file of Complaint No. 51 of 2019 shows that the complainant company had sought relief of possession alongwith interest on delayed possession. Vide order dated 13.02.2019 Hon'ble Authority has allowed relief of refund of entire amount paid by the complainant alongwith interest. Appeal was filed by the respondent against order dated 13.02.2019 passed by Hon'ble Authority. Vide order dated 16.08.2019, Hon'ble Tribunal, Chandigarh has set aside order dated 13.02.2019 passed by Hon'ble Authority vide which refund alongwith interest was granted to the complainant company. It was with consent of both ld. counsel for the parties that the case was remanded back to the Court of Adjudicating Officer and both the parties were directed to appear before Adjudicating Officer on 30.10.2019. The present complaint i.e. Complaint bearing no. 3043 of 2019 was filed on 18.12.2019 i.e after more than one and a half month of remand of Complaint No. 51 of 2019. Since it was in the presence of both ld. counsel for the parties and both the counsel were directed to appear before Court of Adjudicating Officer, it cannot be said that the complainant had concealed the pendency of Complaint No. 51 of 2019 before this Court. It is worthwhile to point it out here that till 29.10.2020, Complaint No. 51 of 2019

remained pending before this Court. In view of judgment dated 16.10.2020 passed in Civil Writ Petition 38144 of 2018 titled as Experion Developers Pvt. Vs State Of Haryana and others by Hon'ble High Court, Complaint no. 51 of 2019 was sent to the Court of Hon'ble Authority vide order dated 29.10.2020 passed by this Court and both the parties alongwith their counsel were directed to appear before that Court on 16.12.2020, which now stands adjourned sine die by Hon'ble Authority. The relief claimed by complainant in Complaint no. 51 of 2019 is not the same as relief claimed by him in the present complaint. The argument of ld. counsel for the respondent that the complainant has concealed the pendency of Complaint no. 51 of 2019 before this Court is also turned down.

18. Another ground taken for non maintainability of the present complaint is pendency of Execution complaint no 1407 of 2019. It has been argued by ld. counsel for the respondent that after order for refund dated 13.02.2019 passed by Hon'ble authority in favour of the complainant, the complainant opted to file Execution complaint no 1407 of 2019. Even after setting aside of order dated 13.02.2019, by Hon'ble Appellate Tribunal, the execution complaint was not withdrawn by the complainant and it was being proceeded. After setting aside order dated 13.02.2019 passed by Hon'ble Authority, the execution complaint could not proceed. It is relevant to mention here that the present complaint bearing number 3043 of 2019 was filed on 18.12.2019 and Execution

Complaint number 1407 of 2019 was withdrawn the very next day i.e. on 19.12.2019. There is no force in the argument of ld. counsel for the respondent.

19. In view of above discussion, learned counsel for the respondent has failed to convince the Court as to how the complaint is not maintainable. Resultantly, it is hereby observed that the present complaint is maintainable.

20. Now coming to the merits of the case. The complainant had booked a residential unit in 'Tivoli Holiday Village' at Dharuhera, District Rewari, Haryana as construction link plan. Total cost of the residential unit has been shown as ₹ 62,00,000/-, out of which the complainant has paid a sum of ₹ 16,00,000/- (₹ 11,00,000/- on 13.12.2007 and ₹ 5,00,000/- on 19.04.2008 vide separate cheques). It is the averment of the respondent that possession was to be delivered within 30 months from the date of start of construction. Copy of Apartment Buyer Agreement has been placed on record from page no 8 to page no. 27 of paper book of complaint. At page no 1, in the column meant for writing date and year of the said agreement, intentionally the column has been left blank. In whole of the Apartment Buyer Agreement, not even at a single place, the date of entering into Apartment Buyer Agreement has been mentioned. On all the pages, signatures of the authorized representatives of both the parties are there but date is not mentioned at any place. At page no 28, it is copy of second reminder which is dated 01.09.2011, unit allotted to the complainant has been shown bearing no TG-V/3B001 measuring 1550 sq. ft.,

sec-5 Dharuhera. As per version of complainant, vide cheque dated 13.12.2007 a sum of ₹ 11,00,000/- was paid to the respondent and vide cheque dated 19.04.2008 a sum of ₹ 5,00,000/- was paid by the complainant to the respondent. In copy of reminder II, the complainant was directed to clear all dues and also delayed interest. At page no. 29 there is another letter dated 10.09.2011 vide which it is intimated to the complainant that the construction of dream house of complainant was going on full swing, structure of club house and villas were complete and the respondent proposes to handover possession of villas by the end of first quarter of 2012. This was letter of September 2011. When Complaint no 51 of 2019 was filed before Hon'ble Authority, it was disposed off on 13.02.2019. By that time 7 years had already lapsed even from the proposed date of the respondent for completion of the Tower in which the unit of the complainant is situated. In judgment dated 13.02.2019 in Complaint no 51 of 2019, it has been observed by Hon'ble Authority that even the excavation work was not complete for laying the foundation of the building. It has further been observed that it was construction linked plan and the respondent has not maintained the pace of construction proportionately. The respondent has already recovered one-fourth of total sale consideration. It has further been observed by Hon'ble Authority that the promoter after recovering the amount from the allottees is duty bound to start the construction work within a reasonable time. He cannot be allowed to defer the construction unreasonably and without any justification. In Appeal no 273 of 2019 titled as TDI

Infrastructure Ltd Vs Manju Arya, Hon'ble Tribunal has referred to observation of Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr. in which it has been observed that period of 3 years is reasonable time.

21. It is the argument of ld. counsel for the complainant that not even a single brick has been laid at the site for construction of the project or tower. It has not been refuted by ld. counsel for the respondent. Though the argument of ld. counsel for the respondent is that the possession was to be handed over within 30 months from start of the project and the time for construction of the project has not been completed, yet it is worthwhile to point it out here that very conveniently the respondent opted not to put any date on Apartment Buyer Agreement and also not to fix any date for completion of the project and respective handing over of the apartment to the complainant and other allottees. It was incumbent upon the respondent to mention the date of entering into Apartment Buyer Agreement and also to disclose the time by which the possession would be handed over to the allottees. With clever motive, the date of entering into Apartment Buyer Agreement and handing over of possession of the unit to the complainant and other allottees has been kept blank, with a view that whenever any allottee asks for handing over possession of the unit allotted to him, respondent would make the excuse of non start of the project.

22. In present case, there is nothing on the record which shows the date of execution of Apartment Buyer Agreement, yet in para no. 4 of judgement dated 13.02.2019 passed by Hon'ble Authority, the copy of which has been placed on record as Annexure R-1, the date of agreement has been mentioned as 10.03.2008. Taking 3 years from said date, possession was required to be handed over to the complainant by 10.03.2011. At the cost of repetition, it is mentioned here that in the year 2019, even the excavation work was not complete and now in the year 2021, the respondent is not in a position to inform the complainant and all the other allottees as to when the possession would be handed over.

“ 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.”

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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.”

23. It is taken from the record that Apartment Buyer Agreement was executed on 10.03.2008. As per version of the respondent, the possession was to be handed over within 30 months from date of start of construction. Since it is proved on the record that construction was never started, period of 30 months from start of construction to hand over possession is of no relevance. As per observation of Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr (Supra), 3 years has been taken to be reasonable time to hand over possession to the

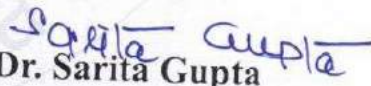
allottee. In this way, the possession of unit was to be handed over to the complainant till 10.03.2011. Even in the year 2021 the respondent company is not in a position to hand over possession to the complainant. This Court is satisfied that the respondent has failed to comply with the provisions and has failed to discharge obligations imposed upon it and has not delivered the possession of unit to the complainant as per terms and conditions of Apartment Buyer Agreement, there is continuous default on the part of respondent. As per provisions of Section 18(3) of RERA Act, the respondent is liable to pay compensation to the complainant/allottee. A sum of ₹ 16,00,000/- has been received by the respondent from the complainant (₹ 11,00,000/- in the year 2007 and ₹ 5,00,000/- in the year 2008) and has been using the same for last 13/14 years, which can be said to be disproportionate gain to the respondent and loss to the complainant as a result of default committed by the respondent. Without start of construction, in the year 2011 and 2013 also respondent is demanding the remaining amount out of total sale consideration. It would be in the interest of justice if the compensation to be paid to the complainant is determined after taking into account the default for a number of years i.e 10 years and 29 days taking from 10.03.2011 and utilisation of the amount paid by the complainant to the respondent starting from 2007/2008 till 2021. The compensation is quantifiable and it would be appropriate if the amount of compensation is calculated at the rate of 6%.

Amount Paid (in ₹)	Time Period	Rate	Compensation Amount (in ₹)
11,00,000/-	10.03.2011 to 31.03.2021	6%	6,63,978/-
5,00,000/-	10.03.2011 to 31.03.2021	6%	3,01,808/-
Total = 16,00,000/-			9,65,786/-

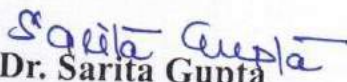
24. Sequel to aforesaid discussion, this complaint is allowed. The complainant is also awarded ₹ 20,000/- as litigation cost. Respondent is directed to pay an amount of ₹ 9,85,786/- [₹9,65,786/- + ₹20,000/-](₹ Nine lakhs eighty five thousand seven hundred and eighty six only) to the complainant in lieu of compensation. The amount shall be paid in two instalments, 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.

25. In these terms, the present complaint stands disposed of. File be consigned to record room, after uploading order on website of Authority.

31.03.2021


Dr. Sarita Gupta
[Adjudicating Officer]

Note: This judgement contains 20 pages. All the pages have been checked and signed by me.


Dr. Sarita Gupta
[Adjudicating Officer]