



Complaint no. 841 of 2020

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in  
**COMPLAINT NO. 841 OF 2020**

Sunil Kumar

....COMPLAINANT(S)

VERSUS

Jindal Realty Pvt Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta**

**Chairman**

**Anil Kumar Panwar**

**Member**

**Dilbag Singh Sihag**

**Member**

**Date of Hearing: 07.09.2021**

**Hearing: 7<sup>th</sup>**

**Present : -** Mr. Sunil Kumar, Complainant through VC  
Mr. Drupad Sangwan, Counsel for the respondent

### **ORDER (RAJAN GUPTA-CHAIRMAN)**

Complainant herein had purchased independent floor no. G-21 FF, having area of 1308 sq ft in respondent's project Jindal Global City, Sonipat. Builder buyer agreement was executed between the parties on 25.09.2012 and in

terms of it possession was supposed to be delivered upto 25.09.2015. It has been alleged by the complainant that possession has not been offered till date even after making payment of Rs 35,09,918/- against total sale price of Rs 34,54,000/- which is reflected in latest statement of accounts dated 29.08.2020. Present complaint has been filed by complainant seeking possession alongwith delay interest and to restrain respondent from levying charges on account of delayed payments, GST, VAT and club charges.

2. Respondent in his written statement 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*

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*developer shall not be held responsible or liable for not performing any of their obligations or undertaking in a timely manner as stipulated in this Agreement. In case of happening of any of the circumstances, the Developer shall be entitled to reasonable extension of time for performing their part of obligation as stipulated in this Agreement."*

3. It has been argued by the respondent that delay in delivery of possession was not deliberate, rather it was due to the amendments made by 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, the and issue of amendment was finally decided by the DTCP on 09.02.2015. Therefore, there was no intentional delay on their part. Further, it has been argued that prior to arbitrary revision of sectoral plan, respondent had obtained approval to 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 in respect of the colony on 10.03.2016. In respect of the unit in question it has been stated that ~~the~~ after completing construction work of unit they have already applied for occupation certificate and possession will be offered to the allottee after receiving occupation certificate.

Regarding the amount of Rs 35,07,704/- paid by complainant, it has been stated that said amount is inclusive of taxes and as such total amount paid by complainant without taxes is Rs 32,81,300/- and balance amount of Rs 1,93,475/- still remains payable by complainant in terms of account statement dated 26.08.2019 attached as annexure R-4 with the reply.



4. This case was heard at length on 28.04.2021 and 14.07.2021 wherein the Authority had observed that plea of complainant for not allowing benefit of force-majeure conditions to the respondent during the period ranging from 04.11.2011 to 09.02.2015 is not tenable and respondent was held to be entitled to the benefit of force-majeure condition prevailing from 04.11.2011 to 09.02.2015. Relevant part of the order is reproduced below: -

*"This Authority in various other complaints relating to the same project has accepted the respondent's plea for allowing it benefit of force-majeure conditions during the period from 04.11.2011 to 09.02.2015 because the concerned department during this period was carrying out revision in sectoral plan and as a result, the respondent was not able to carry out construction and development activities in its project.*

3. *The complainant on the last date of hearing had argued that the benefit of force-majeure condition to the respondent was not permissible in his case because the unit allotted to him was not part of the area in respect of which the department had carried out revision in sectoral plan. The respondent has today produced a copy of sectoral plan approved by the department after revision and the said document depicts that the unit allotted to the complainant was subject of revision carried out by the department. So, the respondent is indeed entitled to the benefit of force-majeure condition prevailing from 04.11.2011 to 09.02.2015.*

4. *Faced in the aforesaid situation, the complainant's counsel has pointed out that the respondent even during the force majeure period had collected Rs. 8.00 lacs from the complainant. The Authority is of the considered opinion that the respondent at a time when it was not able to carry out the construction and development activities due to force majeure conditions was not even entitled to raise further demands against the complainant and therefore, it is liable to pay interest to the complainant on the amount of Rs. 8.00 lacs. The Authority in earlier decided complaints with lead case bearing Complaint No. 569 of 2018 titled as "Roshan Malwal Versus Jindal Realty Pvt. Ltd." and Complaint No. 1048 of 2018 titled as "Nirmala Devi Versus Jindal Realty Pvt. Ltd. had allowed 9% interest in favour of the allottees on the amount illegally*

*charged during the force majeure period. There is no reason for not allowing the same rate of interest in favour of the present complainant on the amount of Rs. 8.00 lacs.*

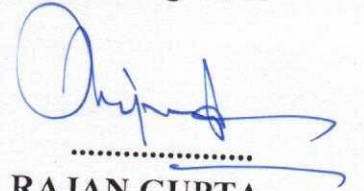
*5. The respondent, in the aforesaid circumstances, is directed to prepare a statement of receivable and payable amounts in which the amount of interest calculated @ 9 percent on rupees eight lacs shall be adjusted in favour of the complainant. Said statement shall be filed and its copy be sent to the complainant atleast 15 days before the next date of hearing. The complainant if not satisfied with the calculations made by the respondent regarding the interest payable to him, shall file a detailed counter calculations before the next date of hearing."*

5. Ld. counsel for respondent has today placed on record a statement of accounts in compliance of previous order. A copy of same has already been supplied to the complainant. In the said statement an amount of Rs 1,81,746/- has been reflected as interest to be paid by respondent to complainant on account of the amount taken during force majeure period ranging from 04.11.2011 to 09.02.2015. Complainant has stated that he is satisfied with this statement of accounts and has requested to pass an order in terms of already decided complaints pertaining to same project. Ld. counsel for respondent has assured that amount of delay interest will be incorporated in the final statement of accounts to be issued at the time of offer of possession which will be made after receiving occupation certificate. Delay interest will be calculated in terms of Rule 15 of HRERA Rules,2017 @9.30% for the period ranging from deemed date of possession which in this case after considering the above said force majeure comes out to 09.02.2018 upto valid offer of possession to be sent after receipt of occupation certificate.

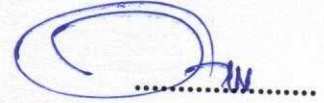
6. After hearing submission of both parties and perusing relevant record, the Authority observes that issues of delay interest, GST, VAT and club has already been decided in various complaints pertaining to same project bearing complaint no. 569 of 2018 titled as "Roshan Malwal Versus Jindal Realty Pvt. Ltd." and Complaint No. 1048 of 2018 titled as "Nirmala Devi Versus Jindal Realty Pvt. Ltd. Accordingly, the respondent is directed to issue fresh statement of accounts alongwith offer of possession in consonance with the principles already laid down in aforementioned cases.
7. Complainant is entitled to delay interest for the delay caused by the respondent from the deemed date of possession to valid offer of possession at the rate prescribed in Rule 15 of HRERA Rules, 2017 i.e. 9.30%. 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 as provided in Rule 15 of HRERA Rules, 2017.
8. Accordingly, the respondent is directed to deliver physical possession of the unit complete in all respects within 30 days to the complainant after receipt of occupation certificate alongwith statement of account in terms of the principles incorporated in above paragraphs. The complainant in case has any grievance in regard to offer of possession and the fresh statement of accounts to be issued he will be at liberty to challenge the same before this Authority by filing a fresh complaint within a month from the date the offer with revised statement is served upon him.



9. With the aforesaid directions, the case is **disposed of**. File be consigned to record room.



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**RAJAN GUPTA**  
[CHAIRMAN]



.....  
**ANIL KUMAR PANWAR**  
[MEMBER]



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**DILBAG SINGH SIHAG**  
[MEMBER]

