



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 1193 OF 2020

Jeewan Jyoti Bhagat

....COMPLAINANT

VERSUS

Realtech Infrastructure Ltd.

....RESPONDENT

2. COMPLAINT NO. 1194 OF 2020

Pawan Aggarwal

....COMPLAINANT

VERSUS

Realtech Infrastructure Ltd.

....RESPONDENT

3. COMPLAINT NO. 1196 OF 2020

Jasbir Singh Rikhi

....COMPLAINANT

VERSUS

Realtech Infrastructure Ltd.

....RESPONDENT

4. COMPLAINT NO. 1197 OF 2020

Divya Monga And Others

....COMPLAINANT

VERSUS

Realtech Infrastructure Ltd.

....RESPONDENT

5. COMPLAINT NO. 1198 OF 2020

Divya Monga And Others

....COMPLAINANT

VERSUS

Realtech Infrastructure Ltd.

....RESPONDENT

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 06.01.2022

Hearing: 7th

Present: -

Mr. Neeraj Sansaniwal, Id Counsel for all the complainants through VC

Mr. Pranjal P. Chaudhry, Id Counsel for the respondent through VC

ORDER (DILBAG SINGH SIHAG-MEMBER)

Initiating his pleadings, Id counsel for the complainants submitted that above captioned complaints may be taken up together for hearing and adjudication since facts and grievances involved in these complaints are identical. Therefore, facts and evidences placed on record in complainant case No. 1193 of 2020 titled as Jeewan Jyoti Bhagat versus Realtech Infrastructure Ltd. have been taken into consideration for disposal of all these cases.



2. He further pleaded that all complainants in bunch of complaints have sought possession of their respective apartments in addition of payment of interest for delay period in handing over possession of booked flats as per HRERA Rules, 2017 from the respondent promoter. He further drawn attention of the Authority towards its orders dated 23.11.2021, the relevant part of the same what did he referred in his pleadings is reproduced below for ready reference:

2. Sh. Neeraj Sansaniwal, learned counsel for complainant submitted that in the year 2006, complainant booked commercial unit by paying a booking amount of ₹12,50,000/- in the project named 'FBDone' Faridabad to be developed by the respondent. Builder buyer agreement was executed between both parties on 09.10.2012 whereby unit bearing no.814 admeasuring 1834 sq. ft. was allotted to the complainant. Total sale consideration of the unit was ₹55,38,680/- against which the complainant had paid ₹52,69,650/- up to the year 2015. As per agreement, possession was to be handed over within 36 months plus 6 months grace period i.e. up to April 2016, but the respondent has neither offered possession nor completed the construction of the project. Therefore, the complainant has filed present complaint seeking immediate possession of the unit along with delay interest as per law.

3. Respondent in his written statement has admitted payment made towards booking of the said unit in his project. Learned counsel for respondent submitted that respondent has obtained occupation certificate of the project on 22.05.2020, copy which has been annexed at Annexure-3. Thereafter possession was offered to the complainant on 27.05.2020 along with demand of ₹19,19,263/-. Complainant did not come forward to take possession or to pay outstanding dues. Various reminders dated 14.06.2019, 26.03.2019, 04.06.2020, 01.07.2020 and 29.09.2020 were also sent to him in this regard but no response is forthcoming from the complainant.

4. Acceding to this fact, learned counsel for complainant stated that respondent had made illegal demands due to which the complainant has not taken possession. The

complainant alleges that respondent has demanded illegal charges on account of IFMS, sinking fund, electrification charges and GST and delay interest for the period of non-delivery of possession.

5. After hearing the parties, the Authority finds that the complainant has basically disputed certain amounts being charged by the respondent such as (a) electrification charges; (b) IFMS; (c) GST; (d) Sinking fund; (e) delay interest. The Authority deems it proper to issue following directions to the respondent:

- i) Regarding GST of ₹1,36,858/-, Authority adds that complainant is liable to pay the GST amount as per actual rates of GST fixed by the Government.
- ii) Regarding ₹1,83,400/- IFMS charges, sinking fund ₹5,50,200/- and electrification charges ₹1,83,400/-, learned counsel for the respondent refer to clause 33(g) of the agreement which stipulates that sinking fund shall be payable. He refers to clause 33(a) to suggest that IFMS will be payable. The electrification charges stated to have been paid stipulated in clause 33 (g) of the agreement.

In accordance with the principles laid down in complaint No.113 of 2018 titled as Madhu Sareen Versus BPTP Ltd., the stipulation made in the agreement have to be adhered to by both the parties, the Authority, however observes that the quantum of money being demanded by the respondent has not been specified in the agreement. The respondents are duty bound to explain the basis of charging these amounts from the complainants. A detailed justification thereof will be submitted before the Authority on the next date of hearing.

- iii) Regarding delay interest, the complainant's grievance is that respondent in his statement of account has not mentioned the amount for delay interest. On perusal of record available on file, deemed date of possession would be April 2016. The respondent has offered possession in the year 2020. So, the respondent is liable to pay interest to the complainant on account of delay in delivery of possession from the deemed date of possession to

the date on which the complainant will take possession at the rate prescribed in Rule 15 of HRERA Rules, 2017.

6. Learned counsel for respondent sought adjournment to settle the matter amicably. Learned counsel for complainant also accedes to this request.

7. On request of both parties, case is adjourned to **06.01.2022**. Respondent is also directed to pay earlier imposed costs of ₹2000/- and ₹5000/- payable to each complainant and to the Authority respectively.

3. Authority observed that complainants are basically disputing demands raised by the respondent on account of a) electrification charges; b) IFMS; c) GST; d) Sinking fund; e) delay interest.

4. Authority observed that respondent promoter has neither submitted any document nor justifying the charges. Moreover, criterion to decide the respective amounts against every head is also missing. No justification has been submitted by them till date. On being asked, learned counsel of the respondent stated that office of the respondent company is in Delhi and due to covid pandemic, company officials are not able to provide justification. He requests short adjournment to settle the matter amicably.

5. While opposing his pleadings, learned counsel for the complainant contended that respondents are only making delay tactics since sufficient opportunities were given to them for settlement. They did not bother to even send any proposal to the complainants for settling their disputes out of

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court proceedings. No acceptable offer of settlement has been received from them till date since last hearing dated 23.11.2021.

6. After consideration of facts and arguments put forth by both counsels, Authority observed that request of the respondents would have been considered in case any offer of settlement has been made to the complainants. But respondent has not complied with orders dated 23.11.2021 passed by the Authority nor filed any justification for the demands in question. Respondent can make demands as per agreement executed between him and complainants/allottees but principles and basis of such charges have to be disclosed. Therefore, Authority considers it just and fair to order as follows:

- i. As far as issue of various charges like electrification charges, IFMS and Sinking fund is concerned, Authority observes that no justification has been given by the respondent regarding same, so these charges are hereby quashed. However, revised demand on account of such charges may be made along with fresh statement of accounts subject to furnishing of satisfactory justification. If aggrieved, complainants will be at liberty to approach this court again.
- ii. GST is already held to be payable. So, complainants are directed to pay GST charges as per laws and policy of the government.
- iii. As far as issue of delay interest is concerned, respondent is liable to pay delay interest to the complainants on account of delay in



delivery of possession from the deemed date of possession to the date on which offer was made to the complainants. This delay interest would be at the rate prescribed in Rule 15 of HRERA Rules, 2017.

Authority after consideration of dates mentioned in their respective complaints, has got calculated respective delay interest at the rate 9.30% for the delay period from its account branch in case of every complaint and the same have been shown distinctly in a table given under:

S no	Comp no.	Deemed date of possession	Offer of possession	Principal amount	Interest accrued till offer of possession	Total recoverable amount till 06.01.2022
1.	1193 of 2020	9 th April 2016	27 th May 2020	₹52,69,650/-	₹20,25,921/-	₹20,25,921/-
2.	1194 of 2020	9 th April 2016	27 th May 2020	₹60,30,685/-	₹23,18,502/-	₹23,18,502/-
3.	1196 of 2020	5 th Aug 2016	27 th May 2020	₹41,99,740/-	₹14,88,670/-	₹14,88,670/-
4.	1197 of 2020	5 th Aug 2017	27 th May 2020	₹55,70,527/-	₹14,56,510/-	₹14,56,510/-
5.	1198 of 2020	5 th Aug 2017	27 th May 2020	₹20,00,000/-	₹5,22,934/-	₹5,22,934/-

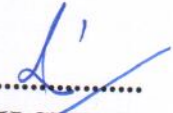
7. Respondent shall hand over possession of respective apartments complete in all aspects along with supporting infrastructure and amenities to the complainants along with delay interest mentioned in above table within 90 days from the date of uploading of this order. Respondent shall also show and

adjust amounts of delay interest in the statement of accounts to be issued to the complainants.

8. Cases are **disposed of** in above terms. Files be consigned to record room.



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH SIHAG
[MEMBER]

