



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No. -2271 of 2019

Date of Institution: -26.09.2019

Date of Decision: - 17.02.2022

Sadhna Goel w/o Sh. Sanjay Kumar Goel & Sanjay Kumar Goel s/o Sh. Ramesh
Raj Gupta, both residents of # 844, Sector-37, Faridabad, Haryana-121003.

....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:- 25th

Present:- Mr. Satish Mishra Advocate, Counsel for the complainants through
video conferencing
Mr. Drupad Sangwan Advocate, Counsel for the respondent
through video conferencing

Sadhna Goel

JUDGEMENT:-

Brief facts of case of the complainants are:

1. The complainants had purchased Plot no. E-6 having an area of 775 square yards in respondent's project 'Jindal Global City', Sonipat under development linked instalment plan. Plot buyer agreement was executed between the parties on 11.01.2011. In terms of clause 8(i) of said agreement, possession was to be delivered within 24+6 months i.e. upto 11.07.2013. An amount of ₹92,03,319/- has been paid against total sale consideration of ₹1,23,08,175/-. For purchase of said plot, the complainants have availed loan of ₹75,00,000/- from HDFC Bank under tripartite agreement dated 31.10.2011. The respondent was requested on many occasions to send offer of possession along with recent statement of account but respondent has not acceded their request and by not offering possession on time, respondent has caused heavy financial loss/burden on complainants which is completely unfair and unjustified. The respondent does not want to give interest for delayed delivery of possession and did not even inform them about representation made by them to DTCP. Feeling aggrieved, the present complaint has been filed seeking compensation for the delay in handing over possession for more than 6 years, refund of entire amount with interest, compensation for loss of opportunity as funds of complainants were stuck in the project for long 6 years, cost for alteration in size of plot to be solely borne by respondent as it failed to take consent nor informed the complainants about the

change as per RERA Act, additional cost due to GST should be shared equally by complainants and respondent as observed by Hon'ble Authority in complaint no. 1048/2018 and same may be refunded or adjusted, compensation up to ₹5,00,000/- for harassment, mental pain and agony and ₹1,00,000 as litigation charges.

2. Upon notice, respondent appeared through counsel and filed written statement taking preliminary objections that complainants have concealed the factum of proceedings initiated by SBI against the complainants before Hon'ble Debt Recovery Tribunal-I, Delhi for their failure to pay due instalments. Complainants have failed to re-pay EMIs, on account of which SBI had issued a letter dated 26.05.2017 seeking refund of ₹ 70,26,423/-. Further SBI issued a legal demand notice on 31.05.2017 and again on 16.11.2017 for recovery of ₹ 72,65,265/-. Thereafter, SBI has filed Original Application no. 411/2018 before Hon'ble Debt Recovery Tribunal-I, Delhi arraying complainants as defendants no. 1 and 2 and the present respondent as defendant no. 3. The complainants have not disclosed that offer of possession was issued to them on 07.10.2016 along with final demand of ₹41,34,777/- but complainants did not meet the said demand. For payment of said demand various reminders dated 07.11.2016, 03.07.2017, 04.08.2017, 16.09.2017 and 01.11.2017 and emails dated 22.05.2017, 06.07.2017, 05.08.2017 and 27.11.2017 were sent to complainants but no response was received from them. The respondent had issued termination

letter on 05.10.2018 after issuing pre-termination letters dated 25.01.2018, 23.02.2018, 23.03.2018 and 11.07.2018 referring to the fact that complainants have not paid a single penny since April 2013 and thereafter SBI was informed that booking of plot number E-6 stands cancelled and earnest money to the tune of ₹43,07,344/- has been forfeited. Subsequent to termination of allotment, no relationship of allottee and promoter exists between the parties and as such complainants are not having locus standi to file this complaint. Thereafter respondent contacted SBI and along with letter dated 13.03.2019 sent a cheque bearing number 347503 dated 28.02.2019 for ₹55,92,094/- drawn on Axis Bank as full and final refund amount after making deductions to the tune of ₹36,11,225/- out of which ₹14,53,144/- was towards 15% earnest money, ₹2,61,565.90 towards GST @ 18% interest money, ₹4,27,412/- towards brokerage paid by the respondent and ₹14,69,103/- as interest @ 10.35% on balance payment and GST @ 18% till cancellation of allotment. But SBI informed the respondent that since the matter was sub-judice before Hon'ble Debt Recovery Tribunal-I, Delhi it could not accept refund and cheque be handed over to its counsel before Hon'ble Debt Recovery Tribunal-I, Delhi. Vide order dated 06.08.2019, Hon'ble Debt Recovery Tribunal-I, Delhi directed the present respondent i.e. Jindal Realty Pvt Ltd to handover the cheque in the sum of ₹55,92,094/- to officer of SBI, further observing that issue of charges as well as

liability of defendant no. 3 (Jindal Realty Pvt Ltd) would be adjudicated by that Tribunal at the time of final hearing.

3. On merits, it has been submitted that 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 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. Respondent has stated that no case is made out for any of the reliefs claimed by complainants. The respondent has prayed for dismissal of the complaint.

4. Perusal of file reveals that initially when the complaint was filed, the complainants had sought relief of compensation for the delay in handing over possession for more than 6 years, refund of entire amount along with interest,

compensation for loss of opportunity as funds of complainants were stuck in the project for long 6 years, cost of alteration in size of plot to be solely borne by respondent as it failed to take consent nor informed the complainants about the change as per RERA Act, additional cost due to GST should be shared equally by complainants and respondent as observed by Hon'ble Authority in complaint no. 1048/2018 and same may be refunded or adjusted, compensation upto ₹5,00,000/- for harassment, mental pain and agony and ₹1,00,000 as litigation charges. On 14.11.2019 counsel for the complainants vide his separate statement had given up all reliefs except compensation. Vide order of even date i.e. 14.11.2019, Sh. Anil Kumar Panwar, the then Adjudicating Officer, had dismissed the relief with regard to refund and relief left was only for compensation.

5. To begin with, it has been argued by learned counsel for complainants that the complainants had purchased Plot No.E-6 having an area of 775 sq. yards in 'Jindal Global City', Project of respondent at Sonipat. Plot buyer agreement was executed between the parties on 11.01.2011. The possession of plot was to be delivered within 24 months + 6 months i.e. up to 11.07.2013. The complainants have paid an amount of ₹ 92,03,319/- against total sale consideration of ₹ 1,23,08,175/-. The complainants had taken loan of ₹ 75,00,000/- from HDFC Bank. Tripartite agreement was executed between the complainants, respondent and HDFC Bank on 31.10.11. Despite repeated requests, offer of possession has

not been given by respondent to the complainants. Neither any statement of account has been issued nor possession has been offered. It has caused the complainants heavy financial burden upon them. The respondent did not inform the complainants about the representation made by them to DTCP. Since there is delay of more than 6 years in handing of possession, the complainants have sought compensation for the said delay, refund of entire amount along with interest, compensation for loss of opportunity as the funds of the complainants had been struck in the project of respondent for long 6 years. The cost of alteration in size is to be borne by the respondent as the complainants were never informed about the change in size. Additional cost due to GST should be shared equally by the complainants and respondent. Observations of Hon'ble Authority in Complaint No.1048 of 2018 are to the same effect. The complainants have also sought compensation to the tune of ₹ 5,00,000/- for harassment, mental pain and agony and ₹ 1,00,000/- as litigation cost.

6. To rebut the arguments of learned counsel for complainants, it has been argued by learned counsel for respondent that the complainants have intentionally concealed the factum of proceedings which were initiated by SBI against the complainants before Hon'ble Debt Recovery Tribunal-I, (herein after referred as DRT) Delhi as the complainants had failed to pay instalments. They had also failed to repay EMI. On 26.05.2017, SBI had issued a letter seeking refund of ₹ 70,26,423/-. A legal demand notice was also issued by SBI on

31.05.2017. For recovery of ₹ 72,65,265/-, SBI filed application before Hon'ble Debt Recovery Tribunal-I Delhi. The complainants have concealed that offer of possession with final demand of ₹ 41,34,777/- was issued to the complainants on 07.10.2016. The complainants did not meet the said demand despite various reminders. After issuance of few pre-termination letters, respondent had issued final termination letter on 05.10.2018. SBI was informed that booking of Plot No.E-6 stood cancelled and earnest money to the tune of ₹ 43,07,344/- has been forfeited. After termination of allotment, relationship between the promoter and the allottee comes to an end and the complainants have no locus standi to file the present complaint. Respondent wanted to transfer the cheque of refund of amount of ₹ 55,92,094/- to SBI after making deductions of ₹ 36,11,225/-. Since the matter was sub-judice before Hon'ble Debt Recovery Tribunal-I, Delhi SBI did not accept the cheque of refund and informed that it could be handed over to its counsel before Hon'ble Debt Recovery Tribunal-I, Delhi. Vide order dated 06.08.2019 Hon'ble Debt Recovery Tribunal-I, Delhi directed the respondent to hand over cheque in the sum of ₹ 55,92,094/- to officer of SBI. It has further been argued by learned counsel for respondent that delay in delivery of possession was not deliberate. It was due to amendments made by Department of Town and Country Planning, Haryana in sectoral plans without informing the promoters. Issue of amendment was decided by DTCP on 09.02.2015. There is no intentional delay on the part of respondent. Prior to arbitrary revision of

sectoral plan, respondent had received approval of layout plan on 08.04.2010 and zoning on 21.09.2011. Since the delay in delivery of possession of plot was due to force majeure, the respondent is not liable to pay compensation or any interest for delay in delivery of possession. Learned counsel for respondent has prayed for dismissal of the complaint.

7. It is not disputed that the complainants had booked Plot No.E-6 measuring 775 sq. yards in 'Jindal Global City', Sonipat. Plot buyer agreement was entered into between the complainants and respondent on 11.01.2013. As per said agreement, possession of the plot was to be delivered on 11.07.2013. It is admitted that the complainants had paid an amount of ₹ 92,03,319/- against total sale consideration of ₹ 1,23,08,175/-. It is the argument of learned counsel for the complainants that despite having received an amount of ₹ 92,03,319/-, the possession of Plot no.E-6 in Jindal Global City, Sonipat has not been delivered to the complainants. On the other hand, it is the argument of learned counsel for the respondent that it was not the fault of respondent in delay in offer of possession. Plea of force majeure has been taken by the respondent. As per observations of Hon'ble Authority in Complaint Case no. 1048/2018 titled as Nirmala Devi Chaudhary and Parul Chaudhary V/s M/s Jindal Realty Pvt. Ltd. decided on 08.01.2019, the period from November 2011 to February 2015 was declared as force majeure. The period of 3 years thereafter was taken as reasonable period to deliver possession. In the present case, deemed date of possession was

11.07.2013. This period is covered under force majeure and till February 2015, the period has to be counted as force majeure period. 3 years period has to be counted thereafter for delivery of possession. It comes to February 2018. It is the argument of learned counsel for respondent that on 07.10.2016, the possession was offered to the complainants along with final demand of ₹ 41,34,777/-. A copy of offer of possession dated 07.10.2016 has been placed on record by learned counsel for respondent as Annexure R4. It is further argument of learned counsel for respondent that for payment of the said demand, various reminders dated 07.11.2016, 03.07.2017, 04.08.2017, 16.09.2017 and 01.11.2017 were sent to the complainants, copies of which have been placed on the record as Annexure R11. As per the argument of learned counsel for respondent various mails dated 22.05.2017, 06.07.2017, 05.08.2017 and 27.11.2017 were also sent to the complainants but the complainants did not deposit the amount. Copies of these mails have not been placed on the record by learned counsel for the respondent. At this stage, it is relevant to mention here that after deducting the period of force majeure, the respondent was having time up to February 2018 to deliver possession of the plot. Record shows that offer of possession was made by the respondent to the complainant on 07.10.2016. This fact has been concealed by learned counsel for the complainants. It has simply been stated in the complaint that despite receiving an amount of ₹ 92,03,319/-, possession has not been offered till date of filing of complaint. The fact regarding offer of possession has been

mentioned at the time of filing reply by the respondent and copy of offer of possession dated 07.10.2016 has been placed on record. It is not the argument of learned counsel for the complainants that the letter dated 07.10.2016 showing offer of possession was a fake document or it was not a valid offer. Learned counsel for the complainants has also not replied as to why the amount shown as final demand in the sum of ₹ 41,34,777/- as demand made for delivery of possession, was not deposited by the complainants. Rather the factum of offer of possession has been concealed by the complainants themselves. The complainants have sought compensation on the ground that despite payment of amount of ₹ 92,03,319/- to the respondent till April 2013, offer of possession has not been made till the time of filing of complaint. In the foregoing paragraph, it is proved on the record that after counting the period of force majeure, the offer of possession was made by the respondent on 07.10.2016, which was within the reasonable time after force majeure period was over. The complainants have failed to prove that either there was delay in delivery of possession or no offer of possession was made at all. Hence the complainants cannot claim compensation on the ground of delay in offer of possession or delay in delivery of possession.

8. It is apparent on the record that after making offer of possession on 07.10.2016, a number of reminders and mails were sent by respondent to the complainants to deposit the remaining amount. It is also proved on the record that neither any reply was sent by the complainants nor any amount was deposited by

them. Pursuant to this, the respondent had cancelled allotment of Plot No.E-6 in favour of the complainants vide letter dated 05.10.2018, copy of which has been placed on record as Annexure R13. It has rightly been argued by learned counsel for respondent that after cancellation of allotment in favour of the complainants, the relationship of allottee and promoter came to an end between the complainant and the respondent. Once the allotment of plot stands cancelled by the respondent and conveyed to the allottees/complainants, the complainants cease to be allottees of the plot in the project of respondent. Since the complainants are no more allottees, they have not right to seek compensation by way of filing complaint.

9. The complainants have also concealed the fact from the Court that proceedings were pending before Hon'ble Debt Recovery Tribunal-I, Delhi. It was the respondent, who had brought to the notice of the Court the proceedings before Hon'ble Debt Recovery Tribunal-I, Delhi. Order dated 06.08.2019 passed by Hon'ble Debt Recovery Tribunal-I, Delhi shows that a sum of ₹ 55,92,094/- was deposited by the respondent with SBI against loan account of the complainants, in whose favour a loan of ₹ 78,00,000/- was sanctioned. Order dated 06.08.2019 passed by Hon'ble Debt Recovery Tribunal-I, Delhi also shows that it has been observed that issue of charges as well as liability of defendant no. 3 (Jindal Realty Pvt. Ltd)., the present respondent would be adjudicated by the Tribunal at the time of final hearing. It is the argument of learned counsel for respondent that after the decision of ^{Hon'ble} Debt Recovery Tribunal-I, Delhi, the

amount, if any, to be paid to the bank, would be paid by respondent-company. Though the proceedings before Debt Recovery Tribunal-I, Delhi had been initiated by State Bank of India, yet the present complainants were parties to the same and these proceedings are with regard to the same project, for which compensation has been claimed by the complainants. Since material facts have been concealed by the complainants from the Court, there is no ground to award any compensation to them.

10. Compensation has to be awarded to the complainants/allottees under Section 72 of RERA Act 2016. The said section has enumerated factors to be taken into account while adjudging the quantum of compensation. The first factor to be taken into consideration is amount of disproportionate gain or unfair advantage and as a result of default, second amount of loss caused as a result of default and repetitive nature of default. It is observed that the complainants have failed to prove default committed by the respondent. It is the argument of learned counsel for respondent that the default has been committed by the complainants themselves and they cannot take benefit of their own wrong. The complainants have failed to prove as to how the respondent has gained disproportionate amount or has taken unfair advantage. It is also not proved on the record that what amount of loss has been caused to the complainants as a result of default of respondent. So far as repetitive nature of default is concerned, it has not been proved by the complainants, having been committed by the respondent.

11. Since the complainants have failed to prove the default committed by the respondent, unfair advantage gained by respondent, loss caused to the complainants, the complainants cannot be said to be entitled to compensation.

The complainants have concealed material facts of offer of possession as well as pendency of proceedings before Hon'ble Debt Recovery Tribunal-I, Delhi.

12. Finding no merit in the complaint, it is ordered to be dismissed with no order as to costs. Judgment be uploaded on the website of the Authority. File be consigned to record room.

17.02.2022

Sarita Gupta
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(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This judgement contains 14 pages and all the pages have been checked and signed by me.

Sarita Gupta
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(DR. SARITA GUPTA)
ADJUDICATING OFFICER