



**HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA**  
Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

**BEFORE THE ADJUDICATING OFFICER**

**Complaint No. -751 of 2021**

**Date of Institution: -22.07.2021**

**Date of Decision: - 17.02.2022**

Anita Khatkar w/o Sh. Bhupender Singh Khatkar & Bhupender Singh Khatkar,  
s/o Sh. Ran Singh, both residents of # E-10, University Campus, Guru  
Jambheshwar University, Hisar-125001.

....COMPLAINANTS

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:- 6<sup>th</sup>**

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

*Satish Mishra*

**ORDER:-**

Brief facts of the complainants' case are that:

1. Original allottee namely Manoj Kumar had booked villa no. B-143 having an area of 194 square yards in respondent's project 'Jindal Global City', Sonipat under development link plan for total sale consideration of ₹50,84,101/-. Builder buyer agreement was executed between the original allottee and respondent on 15.10.2011. In terms of clause 9(i) of it, possession was to be delivered within 30+6 months i.e. upto 15.10.2014. Villa was transferred to Ms. Seema Rani, second buyer on 06.04.2012. Thereafter complainants had purchased the villa in question on 12.06.2013 from second buyer i.e. Ms. Seema Rani. Complainants continued to pay money as per subsequent demands made by respondent from time to time on the pretext of construction of above said unit though respondent had failed to deliver possession of said villa on 15.10.2014. The respondent unilaterally without consulting complainants changed the unit from B-143 to B-197 without prior consent of the complainants and has also got increased its area from 194 sq. yards to 200 sq. yards, thereby putting extra financial burden of ₹6,59,740/- on complainants. New unit agreement (supplementary) was signed between the parties on 18.06.2016 and respondent had issued fresh allotment letter dated 30.08.2016 for total sale consideration of ₹50,55,001/-. The objections regarding change of unit were duly communicated to respondent vide emails dated 08.09.2015 and 12.09.2015. In terms of para 7 of supplementary agreement,

terms and conditions of buyer agreement remained same but delay in handing over of possession of said villa had put a severe financial burden on the complainants as bank loan of ₹24,00,000/- was taken by the complainants on 06.08.2016 from SBI, Hisar. After delay of 4 years and 3 months from deemed date of possession, respondent had offered possession vide letter dated 10.01.2019 to complainants and that too without Occupation certificate/completion certificate and delay interest. Vide letters dated 04.02.2019, 07.02.2019 and 14.01.2021 the complainants sought clarification regarding interest on delayed possession, overcharging for villa on ground of additional charges of IFMS and increase in area from 194 sq. yds to 200 sq. yds, change of location of villa and mental agony and harassment amounting to ₹37,90,083/-. It is evident from statement of accounts attached with offer of possession that an amount of ₹64,99,368/- has been paid against total sale consideration of ₹50,55,001/-. The complainants had to take possession of villa forcibly after executing conveyance deed on 19.06.2019 after making payment under protest on 22.01.2019 and signing of NOC for possession on 22.05.2019. But complainants had expressed their dissatisfaction through emails/letters/representation with regard to unjustified demands which are appended as Annexure A-5 with complaint.

2. Further it is stated that Hon'ble Authority in case no. 1048/2018 titled as Nirmala Devi Chaudhary and Parul Chaudhary vs Jindal Pvt Ltd, treated the period from 04.11.2011 to 09.02.2015 as force majeure and period of 3 years has

been considered reasonable for construction of unit, accordingly deemed date of possession comes to 09.02.2018. Complainants had deposited an amount of ₹10,36,000/- (₹518000+ ₹518000) before force majeure period and an amount of ₹5,15,000/- was paid during force majeure period but before offer of possession was made. Therefore, total amount of ₹21,17,160/- can be considered as disproportionate gain to the respondent which has caused mental pain , agony and financial loss to the complainants. As per calculations of complainants, amount of compensation at the rate of 10.4% has been worked out to ₹12,46,281/- . The present complaint is squarely covered with identical cases on the same set of facts bearing Complaint no. 1190/2019 titled as Vaishali Kaushik & Anr. Vs Jindal Realty Pvt Ltd and Complaint no. 1418/2019 titled as Anil Suri & Anr. Vs Jindal Realty Pvt Ltd both decided on 04.03.2021.

3. Feeling aggrieved, present complaint has been filed seeking interest for delayed possession till 10.01.2019 and resolution of all genuine grievances free from all defects with regard to change in villa and compensation of ₹12,46,281/- as interest @ 10.4% on ₹21,17,160/-, IFMS additional charges, mental agony and harassment, to quash all deemed to be illegal charges as levied in offer of possession, praying indulgence of this Court in settlement of disputes after adjudicating them in a fair, transparent and equitable manner, to pass any interim order relating to illegal charges levied, litigation cost to the tune of ₹1,00,000/- and ₹ 20,00,000/- as compensation for mental harassment and pain.

4. Upon notice, respondent had appeared and filed written statement taking preliminary objections that complainants are third allottee of unit who have purchased allotment rights of unit no. B-143 from Ms. Seema Rani, second allottee on 12.06.2013 and endorsement to this effect was made by respondent in buyer agreement on 14.06.2013. On 23.07.2013 a letter was issued to the complainants relating to 'white good appliances scheme' wherein few additional items were to be offered against the unit so respondent being customer centric company had credited ₹ 90,000/- to complainants. Thereafter a letter dated 16.02.2015 was sent to complainants highlighting the status of development in the project. On 01.09.2015 the complainants were intimated that unit no. B-143 which was earlier allotted to them, has been changed and new unit allotted is B-197 with area of 200.86 sq yds. The said change had been caused due to revision in sectoral plan by DTCP. Regarding said revision a letter dated 19.06.2014 was also sent to complainants for inviting objections for revised layout plan but same was agreed and accepted by complainants and a supplementary agreement for change of unit was also signed on 18.06.2016 to this effect. It has been admitted that complainants have taken loan from SBI and a tripartite agreement was signed between complainants, respondent and SBI on 20.07.2016. The respondent after completing construction work of the unit duly offered possession of the unit on 10.01.2019 after receipt of occupation certificate on 06.11.2018. Complainants after making payment of outstanding amount, have taken possession and got conveyance deed executed on 19.06.2019. The complainants have also signed

indemnity bond dated 01.06.2019 whereby the complainants have undertaken that no claim would be raised against respondent in respect of said unit. The respondent as a gesture of goodwill waived holding charges for 3½ months at the time of getting the conveyance deed executed and also credited an amount of ₹90,000/- to the account of complainants as per the 'White Good appliances Scheme' being a customer oriented company. After execution of conveyance deed, the complainants are no more allottee as defined under section 2 (d) of the RERA Act, 2016. The complainants have claimed relief of delayed interest and other incidental reliefs regarding possession of the unit. The said reliefs claimed by complainants are liable to be adjudicated by Hon'ble RERA Authority and not by this Hon'ble Court. The complaint filed by complainants is not maintainable as agreement between the complainants and respondent was entered into on 15.10.2011 and the RERA Act, 2016 came into force only in year 2017. The Act cannot be applied retrospectively. Complainants have defaulted in payment of instalments as offer of possession was made on 10.01.2019 but conveyance deed after clearing all dues was executed on 19.06.2019 because complainants did not pay the amount timely. Regarding question of delay caused in delivery of possession, it has been stated that the delay 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. Respondent had raised objections to the changes in sectoral plan vide representation dated 04.11.2011 before concerned Authority but in vain. At last, issue of amendment was decided by

DTCP on 09.02.2015. So, there is no intentional delay on 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. It has further been stated that the complaint is drafted on incorrect interpretation of the buyer's agreement because 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. The residential unit in question is complete and the possession has already been taken by complainants after execution of conveyance deed. Any request for compensation at this stage is not maintainable and would jeopardize the entire project. The respondent has prayed for dismissal of complaint.

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

6. Record shows that the unit was originally booked by Manoj Kumar on 19.09.2011. Builder Buyer Agreement was executed between the respondent and Manoj Kumar, original allottee on 15.10.2011. Possession was to be delivered within 3 years upto 15.10.2014. The unit was sold to Ms. Seema Rani, who in turn sold the allotment rights in the project of respondent to the present complainants on 19.03.2012. On 01.09.2015 the respondent had informed the

complainants that their unit no.B-143 has been changed to B-197. Supplementary agreement between the respondent and complainants was executed on 18.06.2016. The offer of possession has been made by the respondent on 10.01.2019. Conveyance deed has been executed on 19.06.2019. It is the argument of ld. counsel for respondent that after execution of conveyance deed, relationship between the allottee and the promoter comes to an end and the allottees cannot claim any relief including compensation after execution of conveyance deed. Ld. counsel for respondent has drawn attention of the Court towards clause 5 of conveyance deed, wherein it has been mentioned that the vendees have been left with no claim against the vendors. Ld. counsel for respondent has also drawn the attention of Court towards clause 47 of Conveyance Deed dated 19.06.2019, in which it has been specifically mentioned that upon possession of said unit being given to vendees, the vendees shall have no claim against the vendor with regard to any item of work, quality of work, materials, installations etc. in the said unit or any ground whatsoever and all such claims, if any, shall be deemed to have been waived.

7. It has further been argued by learned counsel for respondent that since in the conveyance deed dated 19.06.2019 and indemnity bond, the complainants have agreed that they are left with no claim whatsoever against the respondent, now the present complaint can't be said to be maintainable.

8. At this stage, it is relevant to point out here that in clause 47 of the conveyance deed, the words used are 'the vendees shall have no claim against the



vendor with regard to any item of work, quality of work, materials, installations etc....'. Meaning thereby the vendees are left with no claim only with regard to quality of work, item of work, material and installation. At the same time learned counsel for the respondent has also reproduced contents of indemnity bond which are as 'the indemnifiers shall henceforth have no claim against the company of any nature whatsoever in respect of the size, measurement, location and service of the said unit and the indemnifiers shall be fully responsible for the same'. Meaning thereby the vendees are left with no claim with regard to size, measurement, location of the unit. Neither in the conveyance deed nor in the indemnity bond, it has been mentioned that the vendees are left with no right to claim compensation of any type from the promoter. Both the conveyance deed and indemnity bond are specific with regard to size, measurement, location, quality and material of work of the unit. In the present complaint, the complainants are not putting forward any claim with regard to size, measurement, location, quality and material of work.

9. Moreover, in Civil Appeal no. 6239 of 2019 titled as Wg. Cdr. Arifur Rahman Khan and Ors. Vs. DLF Southern Homes Pvt Ltd and Ors. 2020 (3) RCR (Civil) 544 Hon'ble Apex Court has observed that 'we are unable to subscribe to the view of the NCDRC that flat purchasers who obtained possession or executed deeds of conveyance have lost their right to make a claim for compensation for the delayed handing over of the flats'.

10. In Appeal no. 272 and 273 of 2019 <sup>both sq</sup> titled as Manju Arya vs M/s TDI Infrastructure Ltd. and Appeal no. 274 of 2019 titled as Suresh Arya vs M/s TDI Infrastructure Ltd., Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh vide order dated 19.01.2021 has observed that the purchasers will not loose their right to claim for compensation for delayed handing over of possession on the ground that possession has been delivered and conveyance deed has been executed. Section 11(4) of the RERA Act has also been reproduced and discussed in the said judgement by Hon'ble Tribunal and has further observed that this provision does not say that the cause of action which had already accrued to the allottee against the promoter due to non-fulfilment of the obligations as per the agreement for sale shall stand extinguished with the execution of the conveyance-deed. Whatever statutory rights had accrued to the allottee prior to the conveyance-deed, cannot be defeated with the subsequent execution and registration of the conveyance -deed.
11. Hence the argument of learned counsel for the respondent that after execution of conveyance deed and signing of indemnity bond by the complainants, now the complainants are left with no right against the respondent to claim compensation, is ordered to be rejected.
12. Next argument raised by ld. counsel for respondent is that builder buyer agreement was entered into between the parties in the year 2011. 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 complainants cannot file complaint under RERA Act as it has no retrospective application.

13. Though the RERA Act, 2016 has come into operation in year 2017 and in the present case, builder buyer agreement was executed on 15.10.2011 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. Complainants are within their right to approach RERA Authority for redressal of their grievances. Hence this argument of Id. counsel for respondent is turned down.

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

15. 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.”

16. As per record, the complainants had paid ₹5,18,000/- on 19.09.2011, ₹5,18,000/- on 01.11.2011 and ₹5,15,000/- on 14.12.2011. As per complaint no. 1048/2018 titled as Nirmala Devi vs Jindal Realty Pvt. Ltd., Hon'ble Authority had declared period from 04.11.2011 to 09.02.2015 as 'force majeure'. A sum of ₹10,36,000/- (₹5,18,000/- + ₹5,18,000/-) was deposited by the complainants before the period of force majeure and amount of ₹5,15,000/- 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 ₹10,36,000/- taken by the respondent from the complainants in the year 2011 was utilized by the respondent. In the same manner, the amount of ₹5,15,000/- which was taken by the respondent from the complainants was not spent on construction of the unit rather it was also utilized by the respondent to his unfair advantage. The utilization of amount of ₹10,36,000/- and ₹5,15,000/- since 2011 can be termed

as disproportionate gain to the respondent which has caused mental pain and agony and harassment to the complainants. The compensation is quantifiable and it would be appropriate if amount of compensation is calculated @6% per annum.

17. As per statement of account dated 21.08.2021 placed on record as Annexure-OP/17, total amount of ₹45,31,149/- was paid by the complainants after 09.02.2015 when force majeure period was over. Details of said amount are depicted below:-

Sr. No.	Amount in (₹)	Date of Payment
1.	5,23,157/-	15.09.2015
2.	5,23,859/-	14.01.2016
3.	5,28,247/-	14.07.2016
4.	5,28,247/-	09.09.2016
5.	3,91,186/-	19.10.2016
6.	3,96,185/-	02.12.2016
7.	45,116/-	08.03.2017
8.	5,66,160/-	07.05.2018
9.	52,545/-	24.01.2019
10.	90,000/-	19.02.2019
11.	8,86,447/-	28.02.2019
	Total=45,31,149/-	

18. As per Annexure-OP/14, offer of possession was given to the complainants on 10.01.2019. 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 ₹35,02,157/- (₹5,23,157 + ₹5,23,859+ ₹5,28,247 + ₹5,28,247 + ₹3,91,186 + ₹3,96,185 + ₹45,116 + ₹5,66,160) was utilized by the respondent for construction of the unit. Amount of ₹10,28,992/- was deposited by the complainants after offer

of possession. Resultantly, no compensation is being awarded on the amount deposited after 'force majeure' period was over and the amount deposited after offer of possession.

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

Sr. No.	Amount (in ₹)	Time Period	Rate of Interest	Compensation Amount (in ₹)
1.	5,18,000/-	19.9.2011 to 09.02.2015	6%	1,05,502/-
2.	5,18,000/-	01.11.2011 to 09.02.2015	6%	1,01,840/-
3.	5,15,000/-	14.12.2011 to 09.02.2015	6%	97,610/-
Total	15,51,000/-			Total=3,04,952/-

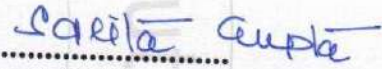
20. Under relief no.1, the complainants have sought interest for delayed possession till 10.01.2019 and resolution of all genuine grievances. It is worthwhile to point it out here that for claiming delay interest, the complainants have to seek remedy before Hon'ble Authority. Under relief no.2, the complainants have prayed to quash all deemed to be illegal charges levied in offer of possession. For this relief also, the complainants have to knock the door of Hon'ble Authority. Under relief no.3, the complainants have sought indulgence of this Court in settlement of dispute. This in fact is not a relief to be granted by

the Court. Under relief no.4, no interim orders were passed. Under relief no.5, compensation for mental harassment has been assessed as ₹3,04,952/- and cost of litigation to the tune of ₹25,000/- has been awarded.

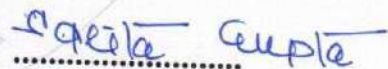
21. Sequel to foregoing observations, the present complaint is partly allowed. Respondent is directed to pay an amount of ₹3,29,952/- [₹3,04,952/- + ₹25,000 (litigation cost)](rupees three lakh twenty nine thousand nine hundred fifty two only). The amount shall be paid in two installments, meaning thereby 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 installment within next 45 days.

22. In these terms, the present complaint stands **disposed of**. After uploading the judgement on website of the Authority, file be consigned to record room.

17.02.2022

  
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(DR. SARITA GUPTA)  
ADJUDICATING OFFICER

**Note:** This judgement contains 15 pages and all the pages have been checked and signed by me.

  
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(DR. SARITA GUPTA)  
ADJUDICATING OFFICER