

BEFORE THE REAL ESTATE REGULATORY AUTHORITY, PANCHKULA

Complaint No.: 02/2018- Rajnesh Gupta **Versus** M/s TDI
Infrastructure Pvt. Ltd.

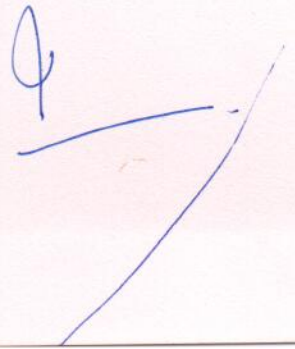
Date of hearing: 21.08.2018, 8th Hearing

Present: 1. Shri Vivek Sethi, Advocate on behalf of
complainant.
2. Shri Shobhit Phutela, Advocate on behalf of
respondent.

Order:

1. The present complaint is being disposed through this final order. The matter was first heard on 08.03.2018 when none appeared on behalf of the respondent. Thereafter it was heard on 27.03.2018 where respondent sought adjournment for filing reply. The Authority granted the adjournment and burdened him with costs of Rs.1,000/- payable to the complainant and Rs.2,000/- payable to the Authority which was paid subsequently. On the hearing dated 02.07.2018. It was statd by the learned counsel for the respondent that the villa L-840, originally allotted to the complainant, was ready for possession, which was vehemently denied by the complainant on the grounds that the villa lacked basic facilities.

Thereupon, the Authority appointed Shri Arvind Mehtani, Chief Town Planner, HRERA Panchkula as a Local Commissioner to inspect the site. Three pertinent questions that needed to be answered were; (i) whether the sewerage facility is available to the villa; (ii) whether the electricity facility is available to the villa, and (iii) whether water supply and roads access is available to the villa.



The report of the Local Commissioner was received on 30.07.2018, and the observations are produced below:

- i) The sewerage facility was available in-front of the constructed villa and the water supply and electricity facility was available across the road.

- ii) The villa was accessible from the road.

It is also informed that one row of 6 to 7 villas were constructed in isolated pocket within the agricultural fields. The villa was not in a habitable condition as the doors were eaten by termite, the window panes were broken and there were no fixtures. On being asked, the counsel of the promoter informed that they have not yet obtained an occupation certificate of the villa from the department.

The Authority then directed the respondent to offer alternative villas to the complainant. The matter was finally listed for hearing today.

2. The case of the complainant is that on 24.10.2005 he booked a 250 sq. yard residential villa, in the real estate project i.e. 'TDI City, Kundli, Sonapat' which was to be developed by the respondent M/s TDI Infrastructure Pvt. Ltd. Booking amount of Rs.6,00,000/- was paid by the complainant on 22.11.2005, following which, an allotment letter was issued by the respondent on 02.08.2006. The complainant was allotted villa L-840, and builder buyer agreement was signed on 18.07.2009. The complainant thereafter made regular payments as demanded, and by 2012 entire amount was paid after getting reassurance from officials of the respondent that possession of residential villa will be offered within 3 months. Against the total consideration of Rs.32,50,000/- plus applicable EDC, the complainant has made payment of Rs.33,42,736/-, receipt of which was affirmed by the respondent vide Statement of Account dated 08.10.2016. The complaint had taken a housing loan from LIC

and had started repaying the loan as well. Despite the payment, since 2012, there has been no communication or intimation from the respondent regarding the possession of the villa.

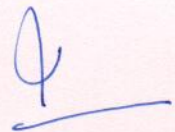
The complainant adds that under the builder buyers agreement, the respondent was duty bound to deliver possession of the villa within a reasonable period of time but no offer has been made for nearly 12-13 years.

The complainant further adds that he served upon respondent legal notice dated 20.12.2015 to which he did not receive any reply. The legal notice called upon the respondents to:

- (i) Deliver possession of the residential villa.
- (ii) Refund amounts paid to the LIC against housing loans @Rs.15,120/- PM since August 2009 @18% interest rate p.a.
- (iii) Refund amount of Rs.1,15,274/- paid as interest @21% p.a on late payment.
- (iv) Refund additional EDC charges of Rs. 1,58,000/- @ 21% interest rate p.a.
- (v) Other compensation and legal costs.

The complainant has also alleged cheating, fraud, criminal conspiracy and criminal breach of trust under Sections 406, 420 and 120B of the Indian Penal Code.

Learned counsel for the complainant further submitted that the deemed date of possession of the villa was in 2012. Such communication took places via emails which were not put on record, and there has been no communication



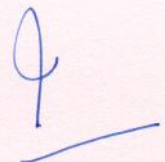
since then. He further submitted that the respondent has failed to follow the previous directions of the Authority by not offering any alternative villas. They also referred to the Local Commissioner's report and stated that the villa allotted to the complainant is in an isolated location and not in a habitable condition.

The complainant asked for refund of their entire amount along with 18% interest. They have further sought appropriate compensation for the delay and the harassment caused to them.

3. The reply of the respondent does not deny main allegations of the complainant. In the reply it has been claimed that their company is well reputed; therefore, the complainant chose to invest in their project. He has further added that the complainant booked the villa for investment purposes and now wants to withdraw from the project due to the slump in the real estate prices.

The basic challenge on the jurisdiction of the Authority is on account of the argument that 80% plotted colony of the township, inclusive of the patch of the land where the villa L-840 is situated, have been granted completion certificate.

During the hearing, Shri Shobit Phutela, learned counsel for the respondent filed a reply to the local commissioner's report. He submitted that the villas form a part of an integrated township which is part of the Master development plan, and apart from the respondent company, there are other developers working in the area. He raised objections to the report and submitted that the project is well accepted by over 3000 customers and that the area is habitable with good infrastructure facilities as several customers have already



accepted possession. During the course of the hearing, he further submitted that 150 plots surrounding the villas have been sold, development of which depends upon the customers.

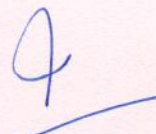
Lastly, he argued that there was no prescribed date of possession as per the builder buyers agreement and that the burden of proof is on the complainant to show that there has been an unreasonable delay in handing over the possession.

4. Arguments of the both the sides have been heard and written pleadings have been perused.

On challenges to the jurisdiction, the Authority has repeatedly ruled that it has jurisdiction over registered and un-registered as well as over ongoing, partially complete, and fully complete projects. The reasons for jurisdiction in the current situation have been clearly elaborated and cited in Complaint No. 144 of 2018- Sanju Jain Vs. TDI Infrastructure Pvt. Ltd. The law laid by the Authority in the said case is as such applicable on the facts of this matter also. It was stated in the order that:

The second purpose for enacting the Act is to establish an adjudicating mechanism for speedy redressal of the grievances of allottees and promoters. The legislature in order to achieve this purpose has laid provisions detailing out the functions and duties of promoters in Chapter-III, rights and duties of allottees in Chapter-IV and also by creation of Real Estate Regulatory Authority and Appellate Tribunal as per the provisions contained in Chapter-V and in Chapter-VII of the Act. There is Chapter VIII relating to the offences emerging from different kind of violations committed in respect of various of the Act and vesting of powers in the Authority/Appellate Tribunal for punishing those offences.

Section 11 of the Act defines and elaborated the functions and duties of a promoter. Nowhere in this section is used the expression 'Promoter of a registered project' and since the expression used everywhere in the Section is 'Promoter', it cannot be legitimately argued that the duties cast upon the



promoter will be applicable only to the promoter of a registered project and not to the promoter of an unregistered project.

Accordingly, none of the objections of the respondent in regard to the jurisdiction of the Authority are sustainable.

It is further observed as follows:-

- (i) The main allegations of the complainant have not been denied, thus, the same stands admitted by the respondent. The respondent received nearly full payment of the villa by 2012. Although the builder buyers agreement was executed, no date of possession was specified. However, despite requests of the complainant, and even upon service of a legal notice, there was no response from the company. The respondent has not denied any of the grounds and has given no justification whatsoever for not offering possession even after execution of the buyers agreement in 2009.

If the claim of the respondent is to be taken on the face value, all activity in the said project is complete and ready for possession, having obtained occupation certificate, it becomes thus noteworthy that the offer of possession was not made until hearing of this complaint by the Authority. It is also expected from a builder of repute, as the respondent is claiming to be, that concerns of the allottees are addressed appropriately by responding to their correspondence, and by offering them possession in a reasonable time period. The respondent has failed to fulfil either obligation as per the terms of the agreement.

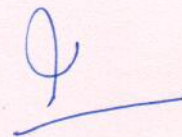


It is, therefore, concluded that the respondents have failed in discharging their responsibilities cast upon them in terms of the letter of allotment, in the terms of the principles enshrined in the Indian Contract Act, the general principles of law of the land, principles of natural justice, and also of the provisions of Real Estate (Regulation and Development) Act, 2016.

The conduct of the respondent is further reprehensible for the reasons that the offer of possession being made by them at such a later stage does not satisfy the needs of the complainant. It is clear from the Local Commissioner's report, stated earlier, that the villa is not in a habitable condition.

6. In view of these conclusions, the respondent is directed as follows:
- i) Furnish the villa as per the terms of the agreement and offer possession to the complainant within 60 days.
 - ii) Ensure that all services are proper and running before offering the possession.
 - iii) Give a detailed statement of accounts to the complainant.

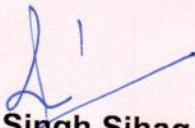
Additionally, the complainant is entitled to receive interest on his payment for the delayed period of possession. In absence of a clause specifying the date of possession and the compensation for delay in possession, it is directed that the interest be calculated on annual basis as prescribed in Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 which reads "the rate of interest payable by the promoter to the allottee or by the allottee to

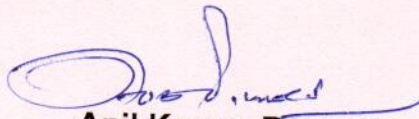


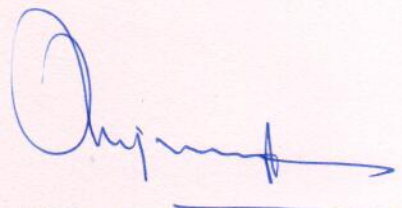
the promoter, as the case may be, shall be the State Bank of India highest marginal cost on lending rate + two percent." Since the last payment was received in 2012, the interest shall be calculated from 01.01.2013 till actual delivery of possession.

The respondent is further directed to calculate the amount of interest payable by them to the complainant and intimate the same to the complainant within 15 days and make actual payment within further period of 30 days from the date of uploading of this order on the website of the Authority. The complainant will retain his further rights to approach the Adjudicating Officer for claiming compensation in accordance with the law.

Disposed of accordingly.


Dilbag Singh Sihag
Member


Anil Kumar Panwar
Member


Rajan Gupta
Chairman 30/8