



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2950 OF 2019

Narender Kumar

....COMPLAINANT/S

VERSUS

M/s TDI Infrastructure Ltd.

....RESPONDENT/S

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 08.07.2022

Hearing: 5th

Present: - Mr. Akshat Mittal, Ld. Counsel for the complainant.

Mr Shubhnit Hans, Ld. Counsel for the respondent.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. At the outset, learned counsel for the complainant pleaded that complainant had booked a flat in the project named 'ESPANIA ROYALE FLOORS', of the respondent at Sonapat in March, 2012. He paid Rs. 4,50,000/- as booking amount on 19.03.2012. Complainant paid Rs.

9,72,000/- as demanded by respondent till June ,2012. Thereafter, complainant received a letter dated 23.08.2012 inviting him to attend draw for allocation and allotment of units in 'ESPANIA ROYALE FLOORS'. Scheduled time and date of said draw was mentioned in the letter which was on 04.09.2012 at 2:00 p.m. onwards. Complainant went on scheduled time on 04.09.2012 to attend said draw but respondent did not conduct any draw on the date fixed or rescheduled it for some other date. Instead, respondent raised a demand of Rs. 6,73,819/- vide letter dated 08.01.2013. Vide said letter, he came to know that respondent had unilaterally allotted RF-29/GF in 'ESPANIA ROYALE FLOORS'. In response to said letter dated 08.01.2013, complainant raised his grievance against unilateral allotment of Flat No. RF-29/GF. He requested respondent to conduct fair allotment by way of draw but to utter surprise of the complainant, respondent sent him Pre-cancellation letter dated 07.03.2013 on account of non-payment of outstanding dues of Rs. 6,91,718/-. Complainant again sent a letter dated 14.03.2013 to respondent objecting to unfair allotment as well as Pre-Cancellation letter and also informed him that the unit allotted to him was not as per his liking. Respondent did not pay any heed to his request for fair reallocation, instead continued raising further demands vide demand letters dated 13.08.2013, 28.08.2013 and 19.09.2013. Respondent cancelled his allotment vide letter dated 23.10.2013. In response, complainant sent a legal notice dated 04.02.2014 asking respondent to either reallocate a fresh unit in his favour by conducting a fresh draw or to refund Rs.

9,72,000/- with interest to him. He also raised said grievances before various offices including office of Principal Secretary, Haryana (Town & Country Planning Department), CCP (NCR), Haryana, DTP, Haryana, Commissioner of Police, Delhi, DCP, Delhi, SHO, Delhi, vide letters dated 29.11.2014 and 31.01.2015. He also raised said grievances before respondent company again vide letter dated 05.10.2015, 31.10.2015, 08.02.2016. Sh. Ravi Sihag, Ld. District Town Planner (HQ), forwarded his complaint to DTP, Sonapat to place it before Allottees Grievances Redressal Forum, Sonapat. Meanwhile, respondent sent him a demand letter dated 20.03.2017 raising demand of Rs. 30,125/-. Complainant was constrained to lodge FIR at SHO, New Delhi. Complainant has paid about Rs. 9,72,000/- till date.

Since, complainant was allotted unit no. RF-29/GF in an unfair manner without following due procedure of draw of lots, which is not acceptable to the complainant, therefore, complainant is seeking refund of Rs. 9,72,000/- along with interest as per Rule 15 of the HRERA, Rules 2017.

2. Learned counsel for respondent while admitting the payment made by the complainant stated that respondent had applied for grant of Occupation Certificate on 31.03.2017 but same has not been granted by Department of Town & Country Planning. He stated that respondent had earlier cancelled his allotment vide letter dated 23.10.2013 on account of non-payment of dues. Later, respondent offered possession of unit vide offer for

fit out letter dated 26.12.2020 but the complainant has neither paid his dues despite repeated reminders nor came forward to take possession of the unit till date.

3. After hearing both parties and perusal of records of the case, Authority observes that respondent vide letter dated 23.08.2012 informed the complainant to attend a draw for allocation and allotment of unit in 'ESPANIA ROYALE FLOORS' on 04.09.2012 at 2:00 p.m. Admittedly, respondent failed to conduct said draw on the scheduled date. Despite, repeated requests by complainant to conduct draw, he did not reschedule it. No, next date of allotment was informed to the complainant. Instead, respondent vide letter dated 08.01.2013, unilaterally allotted RF-29/GF in 'ESPANIA ROYALE FLOORS' in favour of the complainant along with a demand of Rs. 6,73,819/-. Complainant raised his objection qua said unilateral allotment of Flat No. RF-29/GF and requested respondent to conduct fair allotment by way of draw. Instead of fresh allotment of unit to complainant by conducting draw of lots, respondent sent the Pre-cancellation letter dated 07.03.2013 on account of non-payment of outstanding dues. Complainant again objected to unfair allotment as well as Pre-Cancellation letter vide letter dated 14.03.2013. Vide aforesaid letter, he also informed respondent that that the unit was not acceptable to him as it was not as per his liking and even no construction had started at site of his allotted unit. Respondent did not pay any heed to his

request for fair reallocation, instead continued raising further demands vide demand letters dated 13.08.2013, 28.08.2013 and 19.09.2013. Complainant did not pay any further amount as the unit was allotted to him in an unfair manner. Finally, respondent cancelled his allotment vide letter dated 23.10.2013. In response, to cancellation, complainant sent a legal notice dated 04.02.2014 requesting respondent to either reallocate a fresh unit in his favour by conducting a fresh draw or to refund Rs. 9,72,000/- along with interest to him. Respondent neither rescheduled draw of lots of units nor refunded amount deposited by complainant, therefore, complainant raised his grievances before various offices including office of Principal Secretary, Haryana (Town & Country Planning Department), CCP (NCR), Haryana, DTP, Haryana, Commissioner of Police, Delhi, DCP, Delhi, SHO, Delhi, vide letters dated 29.11.2014 and 31.01.2015. He again raised his grievances before the respondent company vide letter dated 05.10.2015, 31.10.2015, 08.02.2016 but respondent did not pay any heed to his grievances.

Sh. Ravi Sihag, Ld. District Town Planner (HQ), took cognizance of his complaint filed before Principal Secretary, Town & Country Planning Department and forwarded his complaint to DTP, Sonapat to place it before Allottees Grievances Redressal Forum, Sonapat. Respondent continued raising demands i.e. demand letter dated 20.03.2017 raising demand of Rs.



30,125/-. So, the complainant lodged FIR-at SHO, New Delhi. Complainant has paid about Rs. 9,72,000/- till date.

In such circumstances, Authority observes that said allotment of unit no. RF-29/GF was not done as per draw of lots as declared by respondent vide letter dated 23.08.2012. Therefore, it was an illegal, unfair and arbitrary allotment. Moreover, the unit allotted to complainant was also not acceptable to him. In such a situation, when the allotment itself is illegal, therefore, the issuance of cancellation and even offer for fit out possession is meaningless. So, said cancellation letter dated 23.10.2013 as well as offer for fit out letter dated 26.12.2020 stand quashed.

In these circumstances, when respondent has not been able to allot a unit in a fair manner by conducting draw of lots to the complainant; and has been using the amount deposited by complainant for the last ten years without any reasonable justification, the Authority finds it to be a fit case for allowing refund of the amount paid by the complainant and directs the respondent to refund amount paid by the complainant along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017 from the date of making payments up to the date of passing of this order. Argument raised by learned counsel for respondent that complainant is at fault because he failed to pay further installments, is irrelevant here because the unit allotted to complainant was not acceptable to him from the very beginning and there was

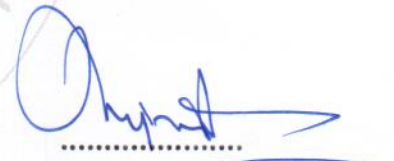


no consensus ad idem qua the same. Therefore, complainant is entitled to refund of Rs. 9,72,000/- along with interest on the amount paid by him from the date of making payments till realization of the same.

4. After perusal of record, Authority observes that complainant has sought refund of Rs. 9,72,000/- as per receipts attached. Therefore, respondent is directed to refund of Rs. 9,72,000/- paid by complainant along with interest. As per verification by Accounts Branch, amount payable by the respondent to the complainant along with interest till the date of this order has been worked out to Rs. 19,32,635/- (Rs. 9,72,000/- + Rs. 9,60,635/-) till date. Therefore, Authority directs the respondent to refund Rs. 19,32,635/-. The respondent shall pay entire amount to the complainant within 90 days of uploading this order on the web portal of the Authority.

Disposed of in these terms. File be consigned to the record room and the order be uploaded on the website of the Authority.

सत्यमेव जयते



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]