



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 907 OF 2019

Rakesh Kumar

....COMPLAINANT

VERSUS

M/s TDI Infrastructure Ltd.

....RESPONDENT

COMPLAINT NO. 908 OF 2019

Joginder Singh

....COMPLAINANT

VERSUS

M/s TDI Infrastructure Ltd.

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 12.07.2022

Hearing: 9th

Present: - Mr. Ajay Ghanghas, Ld. Counsel for the complainants through VC.

Mr. Shubhnit Hans, Ld. Counsel for the respondent.

ORDER (RAJAN GUPTA- CHAIRMAN)

1. Both captioned complaints are being disposed of through this common order for the reason that core issues involved in both cases are identical. Both cases pertain to the same project of the respondent i.e. 'TDI City' at Kundli, Sonapat. This order is being passed in view of the facts of lead **Complaint case no. 907 of 2019 Rakesh Kumar vs TDI Infrastructure Ltd.**

2. On last date of hearing i.e. 22.03.2022, detailed order was passed by Authority. Facts of the case and arguments advanced by both parties were recorded therein. Authority vide order dated 22.03.2022 had ordered to appoint a Local Commissioner to ascertain status of construction/completion of both units and to evaluate the existing condition of the project. Respondent was also directed to file status of Occupation Certificate specifically qua units of complainants. Relevant part of aforementioned order dated 22.03.2022 is reproduced below:

“6. Case of the complainant is that he had booked flat in the project named “TDI City” of the respondent situated at Sonapat on 21.09.2009. Unit No. B-B29/28-FF, measuring 897 sq. fts. was allotted to him on 25.01.2010. Builder Buyer Agreement (hereinafter referred to as BBA) was executed between parties on 24.03.2010. As per BBA, delivery of unit was to be made within 30 months from the date of agreement, thus



deemed date of delivery was in Sept, 2012. Complainant has paid Rs. 18,88,597/- against sale consideration of Rs. 20,61,387/-.

Grouse of the complainant is that construction of his flat is incomplete as reflected in photographs furnished by him today. Further, requisite infrastructural facilities in the project have not been developed and whole area/ colony is uninhabited. Thus, respondent has failed to perform his contractual obligation to deliver possession of the unit to him. He cannot be compelled to wait for completion of his unit for indefinite period of time. Therefore, complainant is seeking refund of Rs. 18,88,597/- along with interest as per Rule 15 of the HRERA, Rules 2017.

7. Learned counsel for the respondent stated that respondent had offered fit out possession of the said units in both cases to the complainants on 25.09.2019. He stated that the units of the complainants are complete and ready for usage. On a query put by the Authority that whether respondent has obtained Occupation Certificate qua complainants' units, learned counsel sought adjournment to seek instructions.

8. At this stage, learned counsel for the complainants stated that offer made on 25.09.2019 is not acceptable to the complainants because aforesaid offer of fit out possession of the units is without actually completing units as well as the project and the same is reflected in the photographs furnished by him today.

9. After hearing arguments of both the parties and perusal of record, Authority observes that both parties are giving conflicting statements regarding completion of the units,



respondent claims that units are complete but the complainants assert that their units are incomplete. Complainants have also filed certain photographs in both the complaints. On perusal of photographs, structure of the towers appears to be ready but status of completion of the units cannot be ascertained from them.

In such scenario, Authority deems it appropriate to appoint a Local Commissioner to ascertain status of construction/completion of both units and to evaluate the existing condition of the project. Local Commissioner shall inspect the site in question in the presence of the both parties and inform the parties in advance about the date on which he would inspect the site. The parties are directed to be present on the site on the date of inspection. Since fit out offer of possession has been made after a delay of about seven years from deemed date of delivery and present status of Occupation Certificate qua both units is unknown, therefore, clearly respondent is at fault. Thus, on account of multiple defaults by the respondent, the expenses of Local Commissioner shall be borne by the respondent company. Local Commissioner shall file his report regarding existing condition of the project and status of completion of the units, within 15 days of his appointment with an advance copies to the parties.

10. Learned counsel for the respondent stated that he has not received aforesaid photographs of the units submitted by complainants today. He may contact office of the Authority to get a copy of the same.



11. Respondent shall also file status of Occupation Certificate specifically qua units of complainants within two weeks with an advance copy to the complainants.”

3. M/s Protech Consortium was appointed as Local Commissioner vide letter dated 05.04.2022 in compliance of order dated 22.03.2022. Expenses of Local Commissioner were ordered to be borne by the respondent company. Local Commissioner i.e. M/s Protech Consultant, Kurukshetra has filed its report dated 22.04.2022 in compliance of the said order along with bill. Bill raised by the local commissioner amounts to Rs. 41,300/- inclusive of GST. Fee of Local Commissioner was remitted by the Authority. Same was recovered from respondent company who deposited it vide DD No. 281526.

4. Local Commissioner has submitted his report on 22.04.2022, wherein he has given details regarding existing condition of the project as well as status of completion of units of complainants i.e. unit no. B-B29/28-FF & B-B29/29-FF. Report submitted by Local Commissioner dated 22.04.2022 is reproduced as below:

“1. Existing Condition of the project

Block B of TDI City was spread over a sufficiently large area but the architect of TDI had no definite idea of the extent of B-Block. There were some three storeyed builtup floors and some freehold plots (to be constructed by the allottees themselves) offered for sale in the

block. A considerable area of the block was under cultivation by private persons. It was stated that this type of land was not under possession of the respondents yet. In such a situation roads and other amenities also could not be laid by the builders in whole of the block. However, roads were found provided where ever floors had been constructed and even in front of many free hold plots (Annexure-I, photo 1, 2). A park was also found developed nearby which was not maintained up to the mark (Annexure-I, photo 3). Road B-29 on which the flats in dispute were situated stood constructed and was in usable condition (Annexure-I, photo-2,4). Apparently, sewer lines and water supply lines were laid along the roads. But local inquiry revealed that sewerage was not connected to any STP so occasionally a tanker was deployed by the builders to extract sewage from a manhole in front of Flats under dispute, and to dispose which was disposed off to some unknown place (Annexure-I, photo 4). Water supply arrangement was told by the residents to be satisfactory. In all there were twenty (plot number 19 to 38), three storeyed blocks on road B-29 having 60 flats. Other plots were for free hold purpose and were to be built by owners. About a one fourth of the flats were inhabited but no one was residing in flats number 28 to 33 on any floor in which the flats of the complainants also fall. Overall, the project is thus not complete to the full extent.

2. Status of completion of the units, B-B29/28-FF & B-B29/29-FF

Above being the position of the campus of Block-B as a whole, the immediate abutting land on back side of the flats number 28 to 33 was under possession of some private persons (Annexure-I, photo 5, 6). The flats number 28-FF and 29-FF of the complainants also fall in this stretch and their balconies also protrude in to this



private land (Annexure-I, photo 7, 8, 9). The interior of both the flats were complete with ordinary tile flooring, doors, water supply & sanitary installations etc. (Annexure-I, photo 11, 12, 13, 14) though wood of doors had deteriorated at some points. But the back side was incomplete, as there was no plaster on walls and back doors of ground floor flats were closed with masonry due to opening in to another's land. There was also growth of wild vegetation on back wall of these flats (Annexure-I, photo 8, 10).

There was no back yard at GF for these flats number 28 to 33 due to this reason and all back side openings of FF and 2F were also at the discretion of private persons holding the land on back side.

The flats under question are thus incomplete, as no one can enjoy an uninterrupted, hygienic and peaceful possession of these residences.”

5. After hearing arguments of both the parties, perusal of record, and also report submitted by local commissioner, Authority observes that considerable area of the block is reported to be under cultivation by private persons. Sewerage system was not connected to Sewerage Treatment Plant. Occasionally a tanker is deployed by builders to extract sewage from the manhole in front of flats under dispute, and same is being disposed off at some unknown place, as is also shown in photographs annexed with report of the Local Commissioner. Further, only about one fourth of flats were inhabited. Local Commissioner reported that overall the project was not complete.



With regard to status of completion of units of complainants, report of local commissioner shows that balconies of both the units were protruding into private land which is still not under possession of respondent. Further, back side of both units is incomplete and there was no plaster on walls. The back doors of ground floor of the flats were closed with masonry as they were opening on private lands. Report states that there was wild vegetation growth on back wall of the flats as shown in photos attached as Annexure-I, photos 8, 10. As per report of local commissioner, flats under question are incomplete, and no one can enjoy uninterrupted, hygienic and peaceful possession of these residences.

In view of aforesaid observation of the Local Commissioner pointing out multiple defects, the apartments cannot be called complete or habitable at all. Therefore, complainants are entitled to refund of amount paid by them along with interest. Therefore, Authority finds it to be a fit case for allowing refund of the amount paid by complainants and directs the respondent to refund the amount paid by the complainants 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.

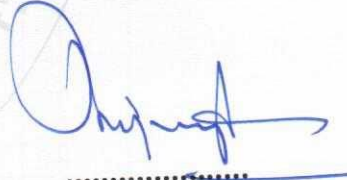
6. Admittedly, complainant has paid total amount of Rs. 18,88,597/- in the Complaint No. 907 of 2019. Thus, as per calculations made by Accounts Branch, amount payable by the respondent to the complainants




along with interest has been worked out to Rs. 39,91,669/- (Rs. 18,88,597/- + Rs. 21,03,072/-). Therefore, Authority directs the respondent to refund **Rs. 39,91,669/-** to the complainant in Complaint No. 907 of 2019.

7. In Complaint No. 908 of 2019, admittedly, complainant has paid total amount of Rs. 18,90,008/-. As per calculations made by Accounts Branch, amount payable by the respondent to the complainant along with interest has been worked out to Rs. 39,95,388/- (Rs. 18,90,008/- + Rs.21,05,380/-). Therefore, Authority directs the respondent to refund **Rs. 39,95,388/-** to the complainant in Complaint No. 908 of 2019.

8. Respondent shall pay entire amount to the complainants within 90 days of uploading this order on the web portal of the Authority.
Disposed of in these terms. Files be consigned to the record room and the orders be uploaded on the website of the Authority.


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RAJAN GUPTA
[CHAIRMAN]


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DILBAG SINGH SIHAG
[MEMBER]