



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1404 OF 2019

Jaspal Kaur

....COMPLAINANT(S)

VERSUS

TDI Infracorp (India) Limited.

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 21.07.2022

Hearing: 9th

Present: - Mr. Anuj Garg, Ld. Counsel for the complainant through VC

Mr. Ajay Ghangas, Ld. Counsel for the respondent through VC.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. While perusing case file, it is observed that on last date of hearing i.e. 08.03.2022, a detailed order was passed by the Authority. Facts of the case and arguments advanced by both parties were recorded therein. Vide order dated

08.03.2022, Authority, a last opportunity was given to the respondent to file evidence by way of photographs and necessary documents to establish that apartment is complete, habitable and ready for usage and can be handed over to the complainant in a few months failing which the Authority will grant refund of the amount paid to the complainant along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017. Respondent was also directed to file status of Occupation Certificate qua apartment of complainant as well as whole project. Relevant part of aforementioned order dated 08.03.2022 is reproduced below:

“4. Case of the complainant is that complainant had booked an apartment in the project named “Lakeside Heights in Lake City Grove” of the respondent situated in Kundli, Sonapat in Aug,2014. Apartment No. T-1/1301, measuring 2350 sq. fts. was allotted to complainant on 17.09.2014. Apartment Buyer Agreement (hereinafter referred to as ABA) was executed between parties on 17.09.2014. As per ABA, delivery of apartment was to be made within 30 months from the date of agreement, thus deemed date of delivery was on 17.03.2017. Complainant has paid Rs. 74,94,563/- against basic sale consideration of Rs. 92,31,010/- till date.

Learned counsel for the complainant stated that complainant had booked aforesaid apartment for her son. Complainant has availed loan of Rs. 53.00 lakhs from bank which is being repaid by his son by way of instalments of Rs. 46,000/- per month. Complainant visited the site in 2017 and then in 2019 and was shocked to find that apartment was nowhere near

completion. She requested respondent either to refund amount paid by her along with interest or to allot alternate apartment vide representation dated 26.12.2016 and email dated 12.06.2019.

Thus, even after lapse of about five years after the deemed date of delivery, respondent has failed to offer possession of apartment to the complainant. She has stated that since her son has bought another apartment at some other location, so she does not need the apartment anymore. Therefore, the complainant is seeking refund of Rs. 74,94,563/- along with interest as per Rule 15 of the HRERA, Rules 2017.

5. Learned counsel for the respondent stated that construction of apartment is at advanced stage and it will be ready for handover of possession within twelve months.

6. Learned counsel for the complainant pointed out that respondent in his reply dated 17.07.2019 has made a statement that apartment will be completed within twelve months. Even today in 2022, learned counsel for respondent is making the same statement that apartment will be ready within twelve months. Thus, it is evident that unit is not complete even today. Therefore, request of the complainant to grant her refund of Rs. 74,94,563/- along with interest as per Rule 15 of the HRERA, Rules 2017 should be accepted.

7. At this stage, learned counsel for the respondent sought adjournment to ascertain the present status of construction of the apartment.

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

such scenario, both parties are directed to visit the site to ascertain present status of completion of the apartment and file photographs as well as necessary documents of the apartment as well as surrounding area/colony at least two weeks before the next date of hearing. Respondent shall establish that apartment as well as nearby areas are complete, inhabitable and ready for usage. He shall file status of Occupation Certificate qua apartment of complainant as well as whole project. Respondent shall also file an affidavit stating total number of apartments, number of apartments handed over to the allottees and number of apartments already constructed in the present project along with a copy of layout plan/building plan of the project. Said information shall also be reflected in the layout plan and building plan with distinct colour differentiation. All aforesaid information shall be filed within two weeks with an advance copy to the complainant failing which the matter will be heard and decided on merits on basis of documents available on record.

In case, respondent fails to establish that the apartment is complete and can be handed over to the complainant in a few months and colony is inhabitable and ready for usage, the Authority will consider it to be a fit case for allowing refund of the amount paid by the complainant and will proceed to grant refund of the amount paid to 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 the order on the next date of hearing.

9. Complainant is also at liberty to file latest photographs showing current stage of completion of his apartment with an advance copy to the respondent.”

2. No information has been placed on record by respondent in compliance of order dated 08.03.2022. Learned counsel for respondent stated that it will take some time to complete the unit.
3. Learned counsel for the complainant has submitted certain photographs of his unit during the proceedings today, which reflect that only skeletal structure is present at the site and the apartment is far from completion. He stated that complainant cannot be compelled to continue wait for indefinite time to get possession of the apartment, therefore, she should be allowed refund along with interest as per Rule 15 of the HRERA, Rules 2017 and as per section 18 of the RERA Act, 2016. Said photographs are taken on record. Respondent may take copy of the same from the office.
4. After perusal of record and hearing arguments advanced by counsel for both parties, Authority observes that despite lapse of about five years from the date of deemed delivery, respondent has failed to offer possession of the allotted apartment to the complainant. Learned counsel for the respondent has also failed to specify fixed time within which possession of apartment can be handed over to the complainant. As per photographs placed on record by complainant's counsel only skeletal structure of the apartment has been erected and it is far from completion. Further, since the complainant had booked the apartment for accommodation of her son but now after lapse of five years her son does not require the apartment anymore. Therefore, due to inordinate delay in



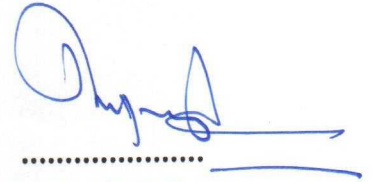
offer of possession, the purpose of booking present apartment by complainant has been defeated. Further, respondent has not placed on record any document showing present status of Occupation Certificate of the project. Thus, the status of Occupation Certificate qua the apartment is unknown. Complainant has already paid Rs. 74,94,563/- against basic sale consideration of Rs. 92,31,010/- till date. Complainant had also availed loan of Rs. 53.00 lakhs from bank which is being repaid by his son by way of instalments of Rs. 46,000/- per month. Thus, respondent has been using the amount deposited by complainant for the last eight years without any justifiable reason.

Therefore, on account of multiple defaults by respondent, Authority finds it to be a fit case for allowing refund of the amount paid by the complainant and directs the respondent to refund Rs./- paid by the complainant along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017 and as per section 18 of the RERA Act, 2016 from the date of making payments up to the date of passing of this order.

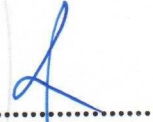
5. As per calculations made by Accounts Branch, amount payable by the respondent to the complainant along with interest has been worked out to Rs. 1,23,25,927/- (Rs. 74,94,563/- + Rs. 48,31,364/-). Therefore, Authority directs the respondent to refund **Rs. 1,23,25,927/-** to complainant.

6. Respondent shall pay the 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 order be uploaded on website of Authority.



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH SIHAG
[MEMBER]

