



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in
COMPLAINT NO. 1084 OF 2018

Dinesh Goel

....COMPLAINANT(S)

VERSUS

TDI Infracorp (India) Limited. & Anr.

....RESPONDENT(S)

CORAM: Rajan Gupta
Dilbag Singh Sihag

Chairman
Member

Date of Hearing: 21.07.2022

Hearing: 12th

Present: - None for the complainant.

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 Original allottee had booked an apartment in the project named “Lakeside Heights in Lake City Grove” of the respondent situated in Kundli, Sonapat in March, 2006. Apartment No. T-8/0/04 FF, Tower--8, measuring 1170 sq. fts. was allotted to complainant on 18.02.2014. Apartment Buyer Agreement (hereinafter referred to as ABA) was executed between parties on 18.11.2013. 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 18.05.2016. Complainant has paid Rs. 34,17,648/- against basic sale consideration of Rs. 44,10,000/- till date.

Learned counsel for the complainant stated that apartment is incomplete as reflected in photographs of the apartment furnished by him which were taken in 2019. Thus, even after lapse of about six years after the deemed date of delivery, respondent has failed to offer possession of apartment to the complainant. Therefore, the complainant is seeking refund of Rs. 34,17,648/- along with interest as per Rule 15 of the HRERA, Rules 2017.

5. Learned counsel for the respondent stated that construction of apartment was complete by 14.06.2018 except internal flooring, plumbing and external finishing. It will be

ready for handover of possession within next two to three months.

6. 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, respondent has stated that apartment is almost complete but the complainant asserts that it is nowhere near completion.

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 and 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 of the project. Respondent shall also file an affidavit stating total number of apartments in the project, number of apartments handed over to the allottees and number of apartments constructed along with a copy of layout plan/building plan of the project. Said information regarding stage of construction etc. 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.

7. 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 the respondent in compliance of order dated 08.03.2022. Learned counsel for the respondent stated that it will take some time to complete the unit.

3. Learned counsel for the complainant had filed certain photographs of his unit in compliance of order dated 08.03.2022 on 19.04.2022. These photographs reflect that only skeletal structure is present at the site and apartment is far from completion. Therefore, complainant cannot be compelled to continue wait for indefinite time to get possession of the apartment. Copy of said photographs have already been sent to respondent.

4. Case was listed for 12th hearing on 21.07.2022. None was present for the complainant. As per Rule 28 (2) Authority has to follow summary procedure for deciding complaints, therefore, Authority reserved the case and

sent an email on 21.07.2022 to the complainant to submit his arguments within 10 days. Written arguments have not been received from complainant till date, therefore, Authority is disposing of the case on basis of available record and arguments advanced by learned counsels of both parties till date.

5. After perusal of record, Authority observes that complainant has averred in his complaint that ABA was executed on 18.11.2013 whereas respondent has mentioned in para (c) and (d) of his reply that ABA was executed between parties on 24.07.2014 but neither party has proved the date of execution of the ABA. The date of execution of agreement is relevant for purposes of establishing deemed date of delivery for calculation of interest due to complainant for delay in delivery of possession. In such circumstances, since neither party has proved the date of execution of ABA on record, therefore, deemed date of delivery of apartment is being taken as three years from the date of making substantial payments. Complainant had admittedly paid substantial amount of Rs. 15,00,300/- till 12.02.2014 which was almost 50% of basic sale consideration of apartment, so, taking three years from 12.02.2014, complainant's apartment should have been delivered to him by 12.02.2017.

Thus, 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



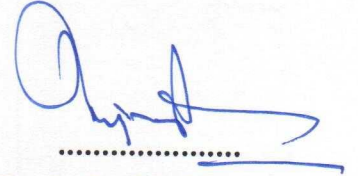
complainant. As per photographs placed on record by complainant's counsel only skeletal structure of the apartment has been erected and it is far from completion. Further, respondent has not placed on record any document showing present status of Occupation Certificate of the project. Status of Occupation Certificate qua the apartment is unknown. Thus, very purpose of buying the apartment has got totally frustrated due to inordinate delay. Moreover, respondent has been using the amount deposited by complainant for the last nine years without any justifiable reason. In such circumstances, complainant cannot be compelled to wait for indefinite time to get possession of the apartment.

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. ~~34,17,648~~ 34,17,648../- 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.

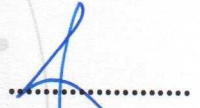
6. As per calculations made by Accounts Branch, amount payable by the respondent to the complainant along with interest has been worked out to Rs. 58,97,601/- (Rs. 34,17,648/- + Rs. 24,79,953/-). Therefore, Authority directs the respondent to refund **Rs. 58,97,601/-** to complainant.

7. 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.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]

