



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 673 OF 2021

Mohit Kapoor

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 12.07.2022

Hearing: 5th

Present: -Mr. Chaitanya Singhal, Ld. counsel for complainant through VC.

Mr. Shubhnit Hans, Ld. Counsel for respondent.

ORDER (RAJAN GUPTA-CHAIRMAN)

1. A detailed order was passed by Authority on 03.02.2022. Facts of the case and arguments advanced by both parties were recorded therein. Authority

vide order dated 03.02.2022 had observed that complainant is entitled to receive refund of amount deposited by him. Respondent was also directed to file status of Occupation Certificate specifically qua unit of complainant. Relevant part of aforementioned order dated 03.02.2022 is reproduced below:

“1. The case of the complainant is that he had booked a flat in the project named “Kingsbury Flats (TDI City)” of the respondent situated at Sonipat on 29.08.2005. Unit No. 0503, Tower-H measuring 1110 sq. ft. was allotted to him. Flat Buyer Agreement (hereinafter referred to as FBA) was executed between the parties on 22.03.2007. Delivery of the flat was to be made within 36 months from the date of agreement, thus deemed date of delivery was 22.03.2010. Payments were to be made under Construction linked payment plan. He has paid about Rs.7,89,088/- till 07.06.2008 against the Basic Sale Price of Rs. 16,09,500/-.

The grouse of the complainant is that respondent has illegally cancelled his allotment vide letter dated 21.10.2010; moreover has failed to refund amount deposited by him till date. So, he is seeking refund of Rs. 7,89,088/- along with interest from the date of payments till actual realization of the amount.

2. Learned counsel for the respondent stated that respondent cancelled allotment of flat of the complainant since he defaulted in making payment of installments after 07.06.2008. He stated that respondent had also sent reminder dated 10.06.2010, requesting complainant to pay his dues. Despite aforesaid reminder, complainant failed to make payment. Thereafter, complainant was afforded opportunity to make payment of due

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installments within 30 days vide Letter of Cancellation dated 21.10.2010, but complainant had failed to make any further payments till date. He stated that respondent vide said Letter of Cancellation dated 21.10.2010, invited complainant to visit their office for receiving refund of amount deposited by him after deposition of original documents of the unit, but complainant did not come to respondent to take refund of deposited amount. Therefore, complainant himself is at default and respondent cannot be burdened for payment of interest on amount deposited by the complainant after 21.10.2010. Learned counsel for the respondent further argued that complainant has been sleeping over his rights. Complainant did not take any action against respondent against aforesaid cancellation, therefore, present complaint which has been filed after eleven years of issuance of said letter is now time barred and deserves to be dismissed.

3. After hearing both parties and perusal of records, Authority observes that although complainant is entitled to receive refund of amount deposited by him but certain preliminary questions need to be answered for adjudication of date from which respondent will be liable to pay interest to the complainant. Same are being formulated as follows:

- i. Whether Letter of Provisional Cancellation dated 21.10.2010 issued by respondent without refund of amount deposited by complainant is valid and legal?
- ii. Whether demands for payment of installments made by the respondent from the complainant were corresponding to the stage of construction of the unit under Construction linked payment

plan? If yes, then respondent shall file supporting documents reflecting the same.

iii. Whether present complaint filed after about eleven years after Pre-cancellation letter is barred by lapse of time?

iv. Whether respondent has received Completion/Occupation Certificate from the concerned department for the unit/project?

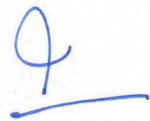
4. Respondent is directed to file information regarding Completion/ Occupation Certificate with an advance copy to the complainant at least fifteen days before next date of hearing.”

2. Learned counsel for respondent has filed an application dated 25.04.2022 for placing on documents in compliance of order dated 03.02.2022. Copy of the same has been sent to complainant. Respondent has annexed copy of Occupation Certificates dated 21.04.2010, 01.06.2010, 25.05.2012 and Demand/Reminder letters issued with aforesaid application.

3. Learned counsel for respondent reiterated argument put forward by him on 03.02.2022. He stated that complainant had defaulted in making payment of installments after 07.06.2008. Respondent had sent several reminders dated 16.12.2009, 18.02.2010, 04.06.2010, 10.06.2010 and 16.08.2010 annexed as Annexure A-2 along with application dated 25.04.2022 requesting the complainant to pay his dues. Despite so many reminders, complainant failed to make payment. Therefore, respondent finally sent Letter of Cancellation dated 21.10.2010, to complainant. Vide said Cancellation letter respondent requested

complainant to either clear outstanding due or visit their office to get refund of amount paid by him after deposition of original documents of the unit, but complainant neither made further payment nor came to take refund of amount paid by him.

4. After hearing both parties and perusal of records, Authority observes that although admittedly allotment was cancelled by respondent vide cancellation letter dated 21.10.2010 but he has not refunded the amount paid by the complainant till date. No cheque issued in favour of complainant for return of amount deposited by him has been placed on record by respondent. Thus, respondent has been using the amount deposited by complainant for the last fourteen years without any justifiable reason. In such circumstances, respondent is liable to refund the amount deposited by the complainant after deduction of earnest money along with interest as per 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. Authority is of opinion that as a general practice in the real estate business 10% of the basic sale consideration is paid as earnest money. Therefore, in the present case, 10 % of basic sale consideration comes to Rs.1,60,950/- . Therefore, interest shall be calculated after deducting Rs. 1,60,950/- from amount paid by complainant. Thus, respondent is liable to refund Rs. 6,28,138/- (Rs. 7,89,088/- - Rs. 1,60,950/-) paid by the complainant along with interest as per

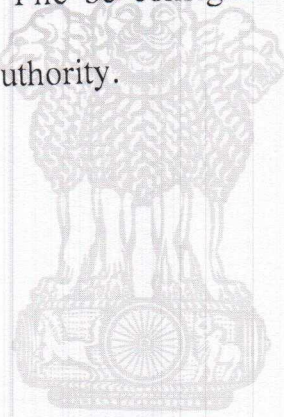


Rule 15 of the HRERA, Rules 2017 from the date of making payments up to the date of passing of the order.

5. As per calculations made by Accounts Branch, the amount payable by the respondent to the complainant along with interest has been worked out to Rs. 16,03,396/- (Rs. 6,28,138/- + Rs. 9,75,258/-) up to date. Therefore, Authority directs the respondent to refund **Rs. 16,03,396/-** to complainant.

6. The respondent shall pay entire amount to the complainant within 90 days of uploading this order on web portal of the Authority.

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



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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]