



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 618 OF 2021

Archana Gupta

....COMPLAINANT/S

VERSUS

TDI Infracorp (India) Ltd.

....RESPONDENT

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 21.07.2022

Hearing: 9th

**Present: -Mr. Davender Gupta husband of complainant through VC.
Mr. Ajay Ghanghas, Ld. Counsel for respondent through VC.**

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. While perusing case file, it is observed that on last date of hearing i.e. 05.04.2022, a detailed order was passed by the Authority. Facts of the case and arguments advanced by both parties were recorded therein. Relevant part of aforementioned order dated 05.04.2022 is reproduced below:

“4. Mr. Davender Gupta , husband of complainant appeared for complainant. He stated that complaint had booked an apartment measuring 1400 sq. fts. in the project named “Waterside Floors in Lake City Grove” of the respondent situated in Kundli, Sonapat in May, 2013. Complainant paid Rs. 6,50,000/- between May, 2018 to August, 2018. He further submitted that super area of the floor and total sale consideration were stated to be 1400 sq. fts. and Rs. 56,00,000/- respectively in the registration form but later on respondent sent a draft agreement in which sale consideration was increased to Rs. 59,78,226/- and carpet area as 990 sq. fts. Therefore, complainant filed Complaint No. 1037-2018 on account of multiple defaults by respondent and sought refund of Rs. 6,50,000/- along with interest as per Rule 15 of the HRERA, Rules 2017. After hearing arguments of both the parties and perusal of record, Authority had disposed of aforesaid complaint vide order dated 13.03.2019 directing respondent to issue revised draft agreement reflecting therein super area as well as carpet area and cost of apartment inclusive of basic sale price, EDC, IDC, applicable taxes, GST etc.

Mr. Davender Gupta further apprised the Court that thereafter, respondent instead of sending revised draft agreement in compliance of order dated 13.03.2019, sent a demand letter dated 15.06.2019 to the complainant seeking car parking charges. Therefore, complainant filed a review application Complaint no. 1032-2019. Said review application was disposed off by Authority on 17.09.2019, again directing respondent to comply with order dated 13.03.2019. Thereafter, complainant sent a letter dated 16.12.2019 to respondent to

send her revised draft agreement in compliance of orders dated 13.03.2019 and 17.09.2019 but till date respondent has not sent her revised draft agreement. At time of disposal of Complaint no. 1037-2018, vide order dated 13.03.2019 a liberty was granted to the complainant to file a fresh complaint in case her grievances were not addressed by the respondent. In pursuance of the liberty, complainant has filed new complaint seeking refund of Rs. 6,50,000/- paid by her along with interest on account of repeated defaults by respondent company.

5. None is present for respondent. Respondent has stated in his reply that he had asked complainant to visit their office to execute revised agreement vide letter dated 30.09.2019 but instead of approaching them to execute the agreement, complainant vide her letter dated 18.10.2019 claimed refund of the amount deposited by her along with interest.

6. After hearing arguments of complainant and perusal of record, Authority observes that Authority vide its order dated 13.03.2019 had directed the respondent to rectify the irregularities and send revised draft agreement to complainant within 30 days of passing of said order; even review application filed by the complainant was disposed of by the Authority vide its order dated 17.09.2019, once again directing respondent to comply with order dated 13.03.2019 but respondent has failed to comply with aforesaid orders till date. Since, complainant was granted liberty to file a fresh complaint in case her grievances were not addressed by the respondent,

2

the complainant has rightfully filed present complaint, seeking refund Rs. 6,50,000/- deposited by her along with interest.

7. Despite lapse of four years from the date of booking i.e. in May, 2018, and passing of orders dated 13.03.2019 and 17.09.2019 directing the respondent to issue revised draft agreement, no agreement has been executed till date. In such circumstances, complainant cannot be compelled to continue with her booking and wait for endless time to execute builder buyer agreement. Thus, prima facie, this is a fit case for allowing refund of amount deposited by complainant along with interest as per Rule 15 of the HRERA, Rules 2017.

8. Since none is present for respondent today, one last opportunity is granted to respondent to argue his case failing which the Authority will proceed further to grant refund of the 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 the order on the next date of hearing.”

2. Learned counsel for the respondent stated that they had sent a letter dated 30.09.2019 to complainant to visit their office for execution of agreement in compliance of orders dated 13.03.2019 and 17.09.2019 but the complainant did not come to execute the same. Instead, she sent a letter dated 18.10.2019 whereby she refused to execute any agreement and sought refund of the entire amount paid by her along with permissible interest. Respondent company again sent a reply dated 21.12.2019 whereby they stated that they were willing to



execute the agreement and also enclosed a copy of draft Builder Buyer Agreement for allotted apartment WF-161 measuring 1400 sq. fts. for total sale consideration of Rs. 54,01,928/-. Complainant did not come forward to execute agreement again.

3. Mr. Devinder Gupta, husband of the complainant stated that after inordinate delay of about nine years from date of booking in the year 2013, the very purpose of booking the flat has been defeated and complainant does not require the flat any more, therefore, she wants refund of entire amount paid by her along with permissible interest.

4. After hearing arguments of complainant and perusal of record, Authority observes that Authority vide its order dated 13.03.2019 had directed the respondent to rectify the irregularities and send revised draft agreement to the complainant within 30 days of passing of said order. Even review application filed by the complainant was disposed of by the Authority vide its order dated 17.09.2019, again directing respondent to comply with order dated 13.03.2019. Respondent had sent a letter dated 30.09.2019 to the complainant to visit their office for execution of agreement in compliance of orders dated 13.03.2019 and 17.09.2019 but complainant did not come to execute the same. Instead, she sent a letter dated 18.10.2019 whereby she refused to execute any agreement and sought refund of the entire amount paid by her along with permissible interest. Respondent company again sent reply dated 21.12.2019 along with draft

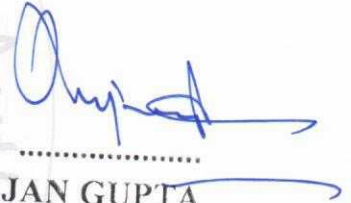
agreement to complainant whereby they had stated that they were willing to execute the agreement. Copy of draft Builder Buyer Agreement enclosed with said reply for apartment WF-161 measuring 1400 sq. fts. for total sale consideration of Rs. 54,01,928/- has been admitted by complainant as Annexure-C-9 but complainant did not come forward to execute agreement again. Complainant has now filed this fresh complaint before Authority seeking refund of amount deposited by her. In such scenario, when Authority has already disposed Complaint No. 1037-2018 vide order dated 13.03.2019 with direction to respondent to issue revised draft agreement reflecting therein super area as well as carpet area and cost of apartment inclusive of basic sale price, EDC, IDC, applicable taxes, GST etc. and respondent has also admittedly made efforts to comply with said order of the Authority, Authority cannot decide the matter afresh. Complainant vide complaint no.1037-2018 had sought refund of amount deposited by her, which was denied by Authority vide order dated 13.03.2019 and instead respondent was directed to issue revised draft agreement reflecting therein super area as well as carpet area and cost of apartment inclusive of basic sale price, EDC, IDC, applicable taxes, GST etc. Thus, once the Authority has rejected relief of refund to the complainant after adjudication of case on merits, complainant cannot be allowed the relief of refund in a fresh complaint filed by complainant on same grounds. Therefore, once an issue regarding the same unit has already been decided by the Authority same issue qua the same subject matter for same relief cannot be reopened. As per the principle of "Res Judicata" there



should be a finality to litigation and no one should be vexed twice for the same cause of action. Authority now only has power to execute its orders dated 13.03.2019. Therefore, complainants are directed to approach respondent's office within a month of uploading of this order to execute agreement in compliance of order dated 13.03.2019.

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





RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]