



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 728 OF 2021

Rajesh Kumar

....COMPLAINANT(S)

VERSUS

1. TDI Infracorp (India) Limited.

....RESPONDENT(S)

2. Chairman, Uttar Haryana Bijli Vitran Nigam

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 12.07.2022

Hearing: 5th

Present: - Mr. Naren Pratap Singh, Ld. Counsel for the complainant.

Mr. Ajay Ghanghas, Ld. Counsel for respondent no.1 through VC.

Ms. Sonia Madan, Ld. Counsel for respondent no.7 through VC.

ORDER (RAJAN GUPTA-CHAIRMAN)

1. This is 5th hearing of the case. Last opportunity was granted to respondent on last date of hearing to file reply subject to payment of cost of Rs.10,000/- and Rs. 5,000/- to the Authority and complainant respectively. Respondent no.1, has not filed reply till date despite grant of several opportunities to him, therefore, now their defence is struck off. Respondent has also failed to deposit aforementioned cost.

2. A detailed order in the matter was passed by Authority on 12.10.2021. Facts of the case and arguments advanced by both parties were recorded therein. Authority vide order dated 12.10.2021 had prima facie observed that respondent no.1 has failed to comply with his obligation to provide electrical infrastructure and connections as committed to residents as per electrification plan dated 14.12.2007 approved by Uttar Haryana Bijli Vitran Nigam. Respondent no.1 was directed to file detailed reply as to action taken by him for providing electricity connections to the residents of the project in question including the complainant, and also put up present status of development of electrical infrastructure at the site. Relevant part of order dated 12.10.2021 is reproduced below:

2. In the present case, possession of plot has been handed over to the complainant. Sale deed qua the said plot was executed in his favour on 21.08.2019. No objection Certificate was also issued by respondent no.1 on 12.02.2021. Therefore, builder buyer relationship stands fulfilled. Now, principle grievance of complainant is that when complainant applied for electricity connection, Uttar Haryana Bijli Vitran Nigam rejected his application on 16.06.2021. Therefore, complainant is seeking direction to various respondents to provide electricity connection on his plot.

3. Till date respondent number 1 i.e. promoter has not filed his reply. Mr. Priyavrat Prashar, Advocate appeared for respondent no.9 and stated that respondent no. 9 has been unnecessarily arrayed as party by the complainant. No direct relief is being

claimed against respondent no.9 as they have no role in providing electricity connection to the complainant. Therefore, he prayed for deleting the name of respondent no. 9 from list of respondents.

4. Ms. Sonia Madan, learned counsel for respondent no.7, also stated that although she has filed reply on behalf of respondent no.7 but in fact, it is respondent no.1 who may be in default having failed to develop adequate electrical infrastructure even after approval of Electrification Plan in the year 2007.

5. After perusal of record, it is evident that onus to provide electricity connection to the complainant lies on respondent no.1 i.e. promoter and local officials of electricity department. Therefore, impleading respondents no. 2 to 6 who are directors/officials of respondent no 1 promoter company seems unnecessary. Accordingly, names of respondent no. 2 to respondent no7 stands deleted from the array of parties.

Further, it is duty of SDO of concerned area to make necessary arrangements for providing electricity connections in that area. The SDO concerned can provide connection if basic electrical infrastructure has been laid. In its absence, even he cannot provide connection. Chairman, Uttar Haryana Bijli Vitran Nigam i.e. respondent no.7 has no direct role in providing electricity connection. Similarly, no specific allegation has been made against respondent no. 8 and respondent no 9. Accordingly, respondent no. 7, 8 and 9 have been unnecessarily arrayed as parties, therefore, name of respondent no. 7, 8 & 9 stands deleted from the list of respondents. In nutshell, respondent no.2 to 9 have been unnecessarily arrayed as they have no direct role in providing electricity connection to the complainant, therefore, names of respondent no. 2 to respondent no.9 stands deleted.

6. Reply filed by respondent no. 7 has already been taken on record. After perusal of reply filed on respondent no.7 it is evident that respondent no.1 has neither constructed electrical substation nor developed other electrical infrastructure on site till date as per approved Electrical Plan dated 14.12.2007. It is the responsibility of respondent no.1 to provide requisite infrastructure to enable Uttar Haryana Bijli Vitran Nigam officials to give connection. Respondent no. 1 has also failed to deposit requisite Bank Guarantee and submit monthly reports of completion of electrical infrastructure to the department.

7. Prima facie it appears that respondent no.1 is failing to comply with his obligations regarding providing of electrical infrastructure and connections as committed to residents as per electrification plan dated 14.12.2007 approved by Uttar Haryana Bijli Vitran Nigam. Therefore, learned counsel for respondent no.1 is directed to file detailed reply as to action taken by the respondent promoter towards providing electricity connection to the residents of the project in question including the complainant. He shall file his reply regarding present status of development of electrical infrastructure on site. Case is adjourned to **01.12.2021**. Respondent no.1 shall file his reply and supply its copy to the complainant at least fifteen days before next date of hearing.”

3. Learned counsel for complainant stated that despite repeated requests of complainant, respondent has failed to provide electricity connection to the complainant due to which complainant and his family are facing great hardships. He further stated that as per reply filed by respondent no.7, it seems



that at present respondent no.1 is not in a position to provide electricity connection to complainant because respondent no.1 has neither constructed electrical substation nor developed other electrical infrastructure on site. Thus, it stands established that respondent has not developed electrical infrastructure qua plot of the complainant. Learned counsel for complainant requested that since at present relief sought by complainant is to direct respondent no.1 to provide electricity connection for his plot is not possible to be granted, therefore, in such circumstances, Authority may pass any order considered appropriate.

4. After hearing both parties and perusal of records, Authority observes that although, complainant has taken possession of plot and sale deed qua the said plot was executed on 21.08.2019, but in the absence of basic infrastructure like electricity connection, project will be deemed to be incomplete and handover of possession cannot be held to be legal and lawful possession.

Authority had laid a criteria as to what shall be called lawful offer/handing over of possession in **Complaint Case No. 903 of 2019- Sandeep Goyal Vs. Omaxe Ltd.** Relevant part of the said order is reproduced below:

“7. At this stage, the Authority would express its views regarding the concept of ‘valid offer of possession’. It is necessary to clarify this concept because after valid and lawful offer of possession liability of promoter for delayed offer of possession comes to an end and liability of allottee for paying holding charges as per agreement commences. On the other hand, if the possession is not valid and lawful, liability of

promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The Authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession of an apartment must have following components:

(i) Firstly, the apartment after its completion should have received occupation certificate from the department concerned certifying that all basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.

(ii) Secondly, the apartment should be in habitable condition. The test of habitability is that the allottee should be able to live in the apartment within 30 days of the offer of possession after carrying out basic cleaning works and getting electricity, water and sewer connections etc. from the relevant authorities. In a habitable apartment all the common facilities like lifts, stairs, lobbies, etc. should be functional or capable of being made functional within 30 days after completing prescribed formalities. The Authority is further of the view that minor defects like little gaps in the windows or minor cracks in some of the tiles, or chipping plaster or chipping paint at some places or improper functioning of drawers of kitchen or cupboards etc. are minor defects which do not render an apartment uninhabitable. Such minor defects can be rectified later at the cost of the developers. The allottees should accept possession of an apartment with such. minor defects under protest. This Authority will award suitable relief or compensation for rectification of minor defects after taking

over of possession under protest. However, if the apartment is not habitable at all because the plastering work is yet to be done, flooring works is yet to be done, common services like lift etc. are non-operational, infrastructural facilities are non-operational then the apartment shall be deemed as uninhabitable and offer of possession of an uninhabitable apartment will not be considered a legally valid offer of possession.

(iii) Thirdly, the offer of possession should not be accompanied by unreasonable additional demands. In several cases additional demands are made and sent along with the offer of possession. Such additional demands could be of minor nature or they could be significant and unreasonable which puts heavy burden upon the allottees. The Authority is of the view that if additional demands are of minor nature, the allottees should accept possession under protest. The disputes in respect of minor amounts, however, can be resolved by this Authority. The offer of possession accompanied with minor additional demands accordingly will be termed legal and justified. However, if the offer of possession is accompanied with a huge additional demands beyond the scope of provisions of the agreement, the allottees cannot be forced to accept such an offer. An offer accompanied with unreasonable demands beyond the scope of provisions of agreement should be termed an invalid offer of possession. Huge unreasonable demands itself would make an offer unsustainable in the eyes of law."

In this case it is clearly established from reply filed by respondent no.7 that respondent no.1 is not in a position to provide electricity connection to



complainant as he has neither constructed electrical substation nor developed other electrical infrastructure at the site. Electricity connection is a basic infrastructural facility and basic necessity of all human beings. Without electricity connection, possession of the plot/flat cannot be enjoyed, there is no use of handing over possession without electricity connection. Therefore, since respondent no. 1 admittedly is not in a situation to provide electric connection, therefore, it is held that plot is uninhabitable and said handover of possession cannot be deemed to be proper and legal. Status of Completion Certificate of project is also unknown as no document qua same has been placed on record by the respondent. In such circumstances Authority concludes that a proper and lawful handing over of possession is yet to take place. Therefore, Authority will consider that proper possession is yet to be offered, therefore, respondent no.1 is liable to pay upfront interest to the complainant as per Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, from the deemed date of offering possession up to lawful offer of possession after receipt of Completion Certificate from the department concerned. Builder Buyer Agreement has not been attached by either party. Since, complainant has bought this plot from the Oriental Bank of Commerce in public auction under THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002, therefore, he does not has a copy of Builder Buyer agreement executed by respondent with the original allottee. He confirmed the same vide his email dated 15.08.2022. Therefore, deemed date of



delivery of plot is being taken as three years from the date of making substantial payments which was 26.09.2013, meaning thereby that complainant's plot should have been delivered to complainant by 26.09.2016. Thus, the deemed date for purpose of calculation of interest for delay in delivery of possession of plot is being taken as 26.09.2016.

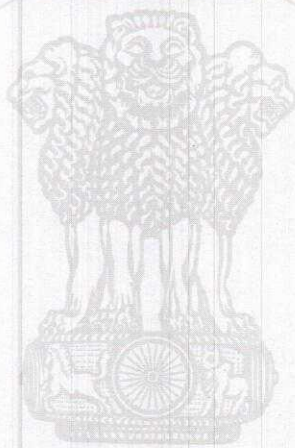
Authority further adds that as per provisions of section 18 of The RERA Act, 2016, accrued interest up to the date of passing this order shall be paid upfront within 90 days and monthly interest thereafter up to the date of receipt of Occupation Certificate shall also be paid. Both amounts will be worked out as per Rule 15 of the HRERA Rules, 2017.

5. Admittedly, complainant has paid total amount of Rs 27,91,500/- which includes the amount of Rs. 7,91,500/- towards EDC. The amounts of EDC is collected by the promoter for payment to the department/authorities entitled to receive it for carrying their statutory obligations. If a builder does not pass on this amount to the concerned department, then interest becomes payable to the department or authority concerned and the defaulting builder in such eventuality will himself be liable to bear the burden of interest. The delay interest accordingly deserves to be calculated only on amount of Rs. 20,00,000/- (Rs 27,91,500/- — Rs. 7,91,500/-).

6. As per calculations verified by Accounts Branch, the amount payable by respondent to complainant on account of interest for delay in handover of

4

possession of the plot up to the date of passing of this order has been worked out to Rs. 11,24,668/- .Authority orders that upfront payment of Rs. 11,24,668/- will be made to complainant on account of delay caused in offering possession within 90 days and further monthly interest @ Rs. 16,167/- will be paid to complainant by the respondents w.e.f. 12.07.2022 till the date receipt of Completion Certificate. Meanwhile respondent no.1 is directed to make endeavors to provide electricity connection to complainant. Respondent shall also pay outstanding cost of Rs. 5,000/- to complainant and Rs. 10,000/- to Authority. **Disposed off**. File be consigned to record room and order be uploaded on the website of the Authority.



सत्यमेव जयते

RAJAN GUPTA
[CHAIRMAN]

DILBAG SINGH SIHAG
[MEMBER]