



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1341 OF 2020

Subhash

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 20.07.2022

Hearing: 3rd

Present: - Mr. Karan Nehra, Ld. Counsel for the complainant through VC.

Mr Shubhnit Hans, Ld. Counsel for the respondent.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. While initiating arguments, learned counsel for the complainant stated that complainant had booked a flat in the project launched by respondent named 'ESPANIA FLOORS', situated in Sonepat on 25.07.2011. Flat No. EF-23/TF, measuring 1224 sq. ft. was allotted to the complainant. Builder Buyer Agreement (hereinafter referred to as BBA) was executed between parties on 17.02.2012. As per BBA, delivery of the flat was to be made within 30 months from the date of agreement, thus deemed date of delivery was on 17.08.2014. Complainant has paid Rs. 21,44,662/- till date against basic sale consideration of Rs. 19,50,003/-.

Respondent has offered him fit out possession on 20.08.2020 but later vide email dated 24.08.2020, respondent withdrew said fit out offer dated 20.08.2020 with a statement that it was sent by a mistake and flat will be offered on attaining Pre-final stage. Thus, main grouse of the complainant is that respondent has failed to handover him a legal possession of flat despite lapse of about eight years from the deemed date of delivery. Learned counsel for the complainant drew attention of the Authority to photographs of flat annexed at Annexure A-6 and stated that flat is still incomplete. Therefore, on account of multiple defaults by the respondent, complainant has sought refund of Rs. 21,44,662/- along with interest as per Rule 15 of the HRERA, Rules 2017.

2. On the other hand, learned counsel for the respondent has admitted to receive Rs. 21,44,662/- from the complainant as per statement of accounts dated 17.02.2022 annexed with their reply as Annexure - R/6 (page-28-33). Learned counsel for the respondent further stated that respondent had filed an application for grant of occupation certificate on 12.09.2016 but the same was dismissed by Director, Town & Country Planning Department, Haryana vide order dated 30.05.2018. Further an appeal was filed by the respondent against said order but the same was dismissed on 26.09.2019 on account of non-prosecution. Presently, a fresh application for grant of Occupation Certificate has been filed on 17.02.2022 before Town & Country Planning Department, Haryana.

3. After hearing both parties and perusal of records of the case, Authority observed that respondent has utterly failed to perform his contractual liabilities. Due date of delivery of flat was on 17.08.2014. Now, even after lapse of eight years, respondent has failed to handover possession of flat to the complainant. The fate of the project is uncertain as respondent has admitted that the application filed by him for grant of Occupation Certificate on 12.09.2016 was dismissed by the concerned department. A fresh application for grant of Occupation Certificate has again been filed by respondent on 17.02.2022. Receipt of Occupation Certificate on this second application cannot also be guaranteed by the respondent. As per photographs placed on record by the complainant, flat seems to be far from completion, therefore, chances of

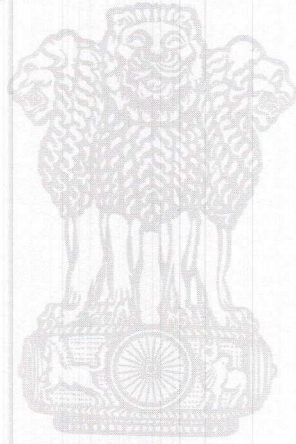


Occupation Certificate being granted on second application also seems bleak. Further, even after inordinate delay of eight years from deemed date of delivery, respondent has failed to specify the date by which unit of the complainant will be complete and ready for delivery. When such inordinate delay has already been caused, it is to be presumed that the purpose of booking the flat has got defeated. In such, circumstances, the option will be of the allottee-complainant to continue with the project or withdraw from it. Therefore, due to huge delay in offer of possession, the purpose of booking present flat by complainant has been defeated. Thus, failure of respondent to deliver possession of flat even after a huge delay of about eleven years from date of initial booking in the year 2011 has frustrated the very purpose of booking the flat. Moreover, respondent has been using said amount of the complainant for last eleven years without any justifiable reason. In such circumstances, complainant cannot be compelled to wait for indefinite time to get possession of the flat.

Thus, on account of multiple defaults by the respondent, complainant is entitled to refund of Rs. 21,44,662/- along with interest. Therefore, 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. 21,44,662/- 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 this order.

4. As per calculations made by Accounts Branch, amount payable by the respondent to the complainant along with interest has been worked out to Rs. 41,61,247/- (Rs. 21,44,662/- + Rs. 20,16,585/-). Therefore, Authority directs the respondent to refund Rs. 41,61,247/- to complainant.

5. 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 the order be uploaded on the website of the Authority.



सत्यमेव जयते

RAJAN GUPTA
[CHAIRMAN]

DILBAG SINGH SIHAG
[MEMBER]