

**BEFORE THE REAL ESTATE REGULATORY AUTHORITY, PANCHKULA**

Complaint No.: 176/2018- Rekha Talwar **Versus** M/s TDI  
Infrastructure Pvt. Ltd.

Date of hearing: 21.08.2018, 1<sup>st</sup> Hearing

Present: 1. Shri Sandeep Kumar, Advocate on behalf of  
complainant.  
2. Shri Shobhit Phutela, Advocate on behalf of  
respondent.

**Order:**

1. The present complaint is being disposed through this final order. The matter was first heard today and has been decided on merits.

2. The case of the complainant is that in February, 2006 she booked a flat located in Kingsbury Flats in the real estate project i.e. TDI City, Kundali, Sonapat which was to be developed by the respondent M/s TDI Infrastructure Pvt. Ltd. A booking amount of Rs. 3,00,000/- was paid by the original buyer, Shri Baljit Singh on 22.02.2006. On 11.01.2007, the complainant made a further deposit of Rs. 2,50,000/- when she was assured by the respondent that the project will be completed within a time period of 30 months. The complainants did not receive any allotment letter, and the respondents did not make any demands for further payments. No builder buyers agreement has been executed till date.

The complainant received no updates regarding the progress of the said project. They then requested for a refund of their money which were ignored by the respondent, who kept on giving future dates for possession of the booked





flat. The complainant also approached the District Town Planner, Sonapat but no concrete action was taken against the respondent.

The present status of Kingsbury Flats shows that the building is complete and possession has been allotted to other people. The complainant thus alleges fraud and cheating because the respondent has fulfilled no obligation, over period of 12 years, after receiving the sum of Rs. 5,50,000/-.

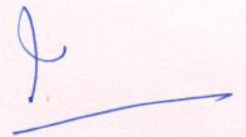
4. During the course of the hearings, Shri Sandeep Kumar, learned counsel for the complainant, emphasized the fact that allotment letter was issued and no builder buyers agreement has been executed till date. He argued that the respondent did not have intentions of handing over the possession as they did not even make demands for future payments.

The complainant asked for refund of their entire amount along with 20 % interest. They have further sought appropriate compensation for the delay and the harassment caused to them.

3. The reply of the respondent does not deny the main issues of the complaint. In brief, they have stated that the company is well reputed and thus, the complainant chose to invest in their project.

The respondent has also challenged the jurisdiction of this Authority on the following three grounds:

- i) The project is not registered under the provisions of the Real Estate (Regulation and Development) Act, 2016.
- ii) The Occupation Certificates in respect of the project have been obtained by the Company before the commencement of The





Haryana Real Estate Regulatory Authority, Panchkula (Regulation and Development) Act, 2016.

- iii) The claim under Section 18 and Section 19(4) of the Act is only maintainable before the Adjudicating Officer as established under Section 71 of the Act.

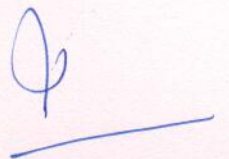
5. Shri Shobit Phutela, learned counsel for the respondent agreed to offer refund plus interest @6% p.a, which was not acceptable to the complainant. He then argued that the complainant has provided no written record of her correspondence with the respondent. Lastly, he reiterated that Occupancy Certificate for Kingsbury Flats has been obtained before the promulgation of the Act and thus, the complainant was not maintainable before the Authority.

6. Arguments of both sides have been heard, written pleadings have been perused and other documents placed in the file have been examined.

Regarding challenges to the jurisdiction, the Authority has repeatedly ruled that it has jurisdiction over registered, un-registered as well as over ongoing and complete projects. This issue relating to jurisdiction of the Authority has been settled by this Authority in detail in Complaint No. 144 of 2018- Sanju Jain Vs. TDI Infrastructure Pvt. Ltd, and the law laid by the Authority in the said case is as such applicable on the facts of this matter also.

Therefore, none of the objections of the respondent in regard to the jurisdiction of the Authority are sustainable.

It is further observed as follows:-





- (i) No allegation made by the complainant has been denied, thus, the same stands admitted by the respondent. Additionally, by offering refund to the complainant, the learned counsel for the respondent has admitted to the fact that the complainant had paid the said amount against which the respondent did not discharge his duties.

The respondent received Rs. 5,50,000/- for the flat upto January, 2007 but no allotment letter was issued nor was builder buyer agreement executed. No reason whatsoever has been cited for not issuing an allotment letter or signing the builder-buyer agreement, thus good faith of the complainant has been badly belied by the respondent. The respondent has not even made demands for further payments, thus, not performing any of his obligations against the amount received. As per the respondent's claims, activity at the site has been completed, occupation certificate has been obtained, and possession has been offered to other people. Thus, there was no justification for the respondent to keep the money of the complainant with them for over 10 years and not allotting them a flat or offering possession.

It is expected from a builder of repute, as the respondent is claiming to be, that at least provisional allotment is granted after receiving the booking amount, and also respond to concerns of the

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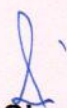
customers in appropriate manner. The respondent, however, did not respond to the correspondence received from the complainant.

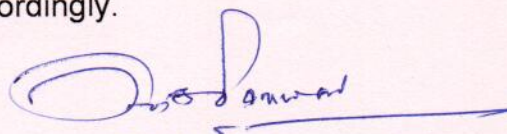
It is, therefore, concluded that the respondents have badly failed in discharging their responsibilities cast upon them under the general principles of law of the land, principles of natural justice, and also of the provisions of Real Estate (Regulation and Development) Act, 2016.

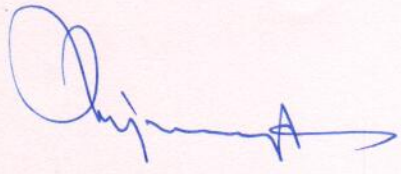
6. In view of foregoing conclusions, it is ordered that the entire amount deposited by the complainant to the respondent shall be refunded along with the interest calculated on annual basis as prescribed in Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 which reads "the rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost on lending rate + two percent."

The respondent is further directed to calculate the amount payable by them to the complainant and intimate the same to the complainant within 15 days and make actual refund within further period of 30 days from the date of uploading of this order on the website of the Authority. The complainant will retain his further rights to approach the Adjudicating Officer for claiming compensation in accordance with the law.

Disposed of accordingly.

  
**Dilbag Singh Sihag**  
Member

  
**Anil Kumar Panwar**  
Member

  
**Rajan Gupta**  
Chairman  
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