



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 240 OF 2020

Kaushalya Wife Of Devender

....COMPLAINANT(S)

VERSUS

TDI Infracorp(India) Limited.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 12.07.2022

Hearing: 13th

Present: - Mr. Sanjeev Sharma, Ld. Counsel for complainant through VC

Mr. Ajay Ghanghas, Ld. Counsel for respondent through VC.

ORDER (RAJAN GUPTA-CHAIRMAN)

1. Case of the complainant stated that complainant is that she initially booked unit no. Y1-0303 in Kingsbury Flats at TDI City, Kundli, Sonapat in the year 2005. She had deposited substantial amount of Rs. 14,66,332/- till April, 2015. Despite receipt of such huge amount no builder buyer agreement has been

executed by respondent despite lapse of ten years from date of booking. Possession of the unit was also not offered till April, 2015. Later on, husband of complainant was diagnosed with cancer, therefore, she requested for change of the unit. Fresh allotment of unit no. T-17/304 measuring 1375 sq. fts was made by respondent on 23.07.2015 in Project 'Lake Drive' Lake Grove, Kundli Sonapat which was being developed by the respondent promoter. Entire amount paid by complainant towards unit no. Y1-303 in Kingsbury Project i.e. Rs. 14,66,332/- was adjusted towards the fresh allotment. Thereafter, a Builder Buyer Agreement (hereinafter referred to as BBA) was executed between parties on 23.07.2015. As per BBA, delivery of the flat was to be made within 42 months from the date of agreement, thus deemed date of delivery was in Jan, 2019. She has paid Rs. 14,66,332/- till date against total sale consideration of Rs. 54,18,463/-, however, due to deteriorating condition of her husband she could not pay further installments. For this reason her unit was cancelled by respondent on 18.03.2019 and entire amount paid by complainant i.e. Rs. 14,66,332/- was forfeited.

Learned counsel for complainant states that in the pleadings, complainant prayed for possession along with interest on account of delay caused, refund of parking charges if levied without providing garage, refund of Value Added Tax (VAT) charged @ 1%, and issuance of conveyance deed. He further submitted that in his pleadings, complainant had in alternate sought relief of



refund of forfeited amount of Rs. 14,66,332/-. He further argued that now after lapse of about seventeen years, circumstances of complainant have changed, and now, complainant is not in a position to pay any additional amount. Instead she is in dire need of money to meet expenses of her husband's treatment who is suffering from cancer. In such a situation, complainant prays for refund of the amount deposited by her i.e. Rs. 14,66,332/- along with interest as per rule 15 of HRERA Rules, 2017.

2. Learned counsel for respondent argued that complainant has been defaulting in making payment of installments. Therefore, respondent had sent Pre-Cancellation letter dated 20.08.2012 to the complainant. Respondent admits that complainant had paid Rs. 14,66,332/- till 18.04.2015. Respondent, on request of complainant changed her unit to unit no. T-17/304 in Project 'Lake Drive' Lake Grove, Kundli Sonapat and adjusted Rs. 14,66,332/- paid in respect of earlier allotted unit towards sale consideration of the present unit. Despite repeated reminders, complainant continued to default in payment of installments due which her allotment was cancelled vide letter dated 18.03.2019. The amount deposited by complainant i.e. Rs. 14,66,332/- was forfeited as 'Earnest Money' as per clause 10 of the ABA which is 15 percent of basic sale consideration.

On a query put by the Authority regarding status of Occupation Certificate and stage of completion of unit, respondent verbally informed Authority that respondent had applied for grant of Occupation Certificate for the



project in May, 2021 and receipt of same is awaited. He was not aware of the status of completion of the unit and nothing qua same has been mentioned by respondent in his reply.

3. After hearing arguments of both parties and perusal of record, Authority observes that admittedly, complainant had booked unit no. Y1-0303 in Kingsbury Flats at TDI City, Kundli, Sonapat in the year 2005 and had paid Rs. 11,16,332/- till October, 2010. Total amount of Rs. 14,66,332/- was paid by complainant towards initially allotted unit. Despite payment of substantial amount of Rs. 14,66,332/-, till 18.04.2015 and lapse of about ten years from date of booking in the year 2005, respondent neither executed any agreement with complainant till the year 2015 nor handed over possession of allotted unit to her. Thus, an inordinate delay had been caused by respondent till the year 2015 in handing over of possession of allotted unit. During said period of ten years circumstances of complainant changed as her husband was diagnosed with cancer. On account of expensive medical treatment of her husband, she requested respondent to change her unit. Therefore, she was allotted unit no. T-17/304 in Project 'Lake Drive' Lake Grove, Kundli Sonapat. As per BBA, the deemed date of delivery was 23.01.2019. Complainant has paid Rs. 14,66,332/- till April, 2015 against total sale consideration of new unit i.e. Rs. 54,18,463/-. Due to deteriorating health of her husband, complainant was also not able to pay further installments. Her unit was cancelled on 18.03.2019 and the whole amount paid to



respondent by complainant i.e. Rs. 14,66,332/- was forfeited by the respondent promoter without taking into consideration the interest accrued on the amount paid by complainant on account of delay caused by respondent in delivery of possession from date of booking in the year 2005 till 2015 and till 2019. Respondent even now has failed to disclose status of completion of the unit as well as receipt of Occupation Certificate. Thus, even at present status of Occupation Certificate is unknown. Therefore, respondent could not have offered a legal possession in 2015 and 2019 and for that matter even now.

The request made by the complainant for change of unit in the year 2014-2015, does not obliterate duties of the respondent to execute agreement in a reasonable period of time after booking and also to complete the project. This is an ongoing project even now and is still incomplete, and respondent has not received Completion Certificate or Occupation Certificate till date. Respondent is obliged to fulfill his obligations provided under provisions of the RERA Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017.

Respondent executed an agreement on 23.07.2015 which was after lapse of about 10 years from the date of original booking in the year 2005. In case, the builder had executed agreement and completed the unit in a reasonable period after booking of unit in the year 2005 then possession of original unit would have been given to the complainant by the year 2010 and situation of such hardship to complainant would not have arisen. Instead, respondent failed to



comply with his statutory duties and delayed the process of delivery of unit, and in the meanwhile unfortunately, circumstances of the complainant changed as stated above and she is no more in a position to meet further expenses and retain original or even subsequently allotted unit.

4. This is a classic case of unfair trade practices on the part of promoter company where they themselves fails to fulfill their obligations and use their dominant position to harass the allottees and force them to submit to their wishes. Respondent has failed to discharge his obligations on multiple counts like he has failed to complete the unit; has no information qua receipt of Completion and Occupation Certificate from the department concerned; do not feel responsible to account for interest due to complainant allottee for delay in offering possession of unit etc. Instead, respondent has tried to shift entire blame on complainant allottee by stating that they had cancelled allotment of unit on 18.03.2019 and forfeited the whole amount deposited by her i.e. Rs. 14,66,332/- as 'Earnest Money' on account of default in payment of installments. Respondent herein, cannot be allowed to escape from his responsibilities. After lapse of seventeen years from date of booking, respondent even today is not in a position to handover a legally valid possession of unit to complainant along with Occupation Certificate. Therefore, cancellation of allotment of unit by the respondent vide letter 18.03.2019 cannot be sustained and cancellation letter dated 18.03.2019 hereby stands quashed.



In such circumstances, when complainant wishes to withdraw from project and admittedly, project is not complete as it has not yet received Completion/Occupation Certificate. Respondent cannot be allowed to make profit out of situation of the complainant when he himself has not discharged his duties. Now, complainant is not in a position to pay any more money. Instead she is in dire need of money to meet expenses of her husband's treatment.

Therefore, Authority finds it to be a fit case for allowing refund of the amount paid by complainant and directs the respondent to refund Rs. 14,66,332/- 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.

5. Complainant in his complaint has averred that he had paid Rs. 11,16,332/- till October, 2010, but no such receipt was found attached with the complaint. Office had sought proof regarding the same from the complainant as well as from the respondent via email dated 02.08.2022 to which learned counsel of the complainant has sent a written statement on behalf of complainant stating that since complainant is unable to locate all receipts, therefore, complainant accepts calculation of interest from 09.07.2015. He has also sent copy of receipt dated 18.04.2015 along with a copy of statement of accounts issued by respondent dated 18.04.2015. Said copies supplied by complainant reflect that complainant had paid Rs. 3,50,000/- on 18.04.2015 and Rs. 11,16,332/- on 09.07.2015. Thus,



complainant has paid total amount of Rs. 14,66,332/- till 09.07.2015. Same has also been admitted by respondent in his reply. Accordingly, Authority has got calculated the interest payable to the complainant and as per calculations made and verified by Accounts Branch, amount payable by the respondent to the complainant along with interest has been worked out to **Rs. 24,71,936/-** (Rs. 14,66,332/- + Rs. 10,05,604/-). Therefore, Authority directs the respondent to refund Rs. **24,71,936/-** to the complainant.

6. Respondent shall pay the entire amount to the complainant within 90 days of uploading this order on the web portal of the Authority. Respondent shall also pay outstanding cost of Rs. 2,000/- and Rs. 5,000/- payable to the complainant and Authority respectively.

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


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RAJAN GUPTA
[CHAIRMAN]


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DILBAG SINGH SIHAG
[MEMBER]