



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 930 OF 2018

Anita Goel

....COMPLAINANT

VERSUS

M/s TDI Infrastructure Ltd.

....RESPONDENTS

& M/s Intime Infrastructure Ltd.

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 29.07.2022

Hearing: 16th

Present: Ms. Neha Garg, Ld. Counsel for the complainant through VC.

Mr. Shubhnit Hans, Ld. Counsel for the respondent.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. Initiating, her arguments, learned counsel for the complainant submitted that original allottee had booked a plot in the project named 'TDI City', of the respondent situated at Sonapat on 13.10.2005. Plot No. I- 54, measuring 500 sq. yds. was allotted to original allottee vide allotment letter dated 19.01.2006. Said plot was transferred in favour of the complainant in the year 2009. Complainant has paid Rs. 48,34,970/- till 28.12.2006 against basic sale consideration of Rs. 38,53,000/-. No Builder Buyer Agreement (hereinafter referred to as BBA) was executed between parties. No deemed date of delivery was stated by the respondent but in some similar cases, respondent had assured allottees to deliver possession of plots within three years from the date of making substantial payments by them. In this case, respondent has already received an amount of Rs. 48,34,970/- till 28.12.2006 against basic sale consideration of Rs. 38,53,000/- which is more than 100% basic sale consideration. Therefore, learned counsel for the complainant pleaded that in this case since no date of delivery of possession has been mentioned by the respondent, therefore, deemed date of delivery of plot should be taken as three years from date of making substantial payments which was 28.12.2006, meaning thereby that complainant's plot should have been delivered to her by 28.12.2009.



Since respondent failed to deliver possession of plot to the complainant till 2011, therefore, complainant filed a complaint before Hon'ble District Consumer Disputes Redressal Forum, New Delhi which was withdrawn later on account of lack of pecuniary jurisdiction on 03.10.2018. She had also filed a complaint before Hon'ble State Consumer Disputes Redressal Commission, New Delhi for handover of the possession of the plot along with interest which was dismissed vide order dated 06.12.2017 with observation that complainant should seek relief of possession in the complaint filed before Hon'ble District Consumer Disputes Redressal Forum, New Delhi which was pending for its final adjudication at that time.

Main grouse of the complainant is that respondent has offered her possession of the plot on 14.09.2018 after a delay of about twelve years from the date of booking, along with additional demands amounting to Rs. 11,08,037/- which was not acceptable to the complainant. Therefore, she has sought refund of Rs. 48,34,970/- along with interest as per Rule 15 of the HRERA, Rules 2017 from the date of payments till actual realization of the amount.

2. Leaned counsel for the respondent has refuted allegations made by the complainant on the ground that plot of complainant falls under License No. 745 of 2006. Said part of the project has been developed and Part Completion Certificate was granted by the Department of Town & Country



Planning, Haryana on 18.11.2013. He stated that respondent has offered possession of plot to the complainant on 14.09.2018 after development of basic infrastructural facilities in the project but complainant has not come forward to take possession of the plot.

3. After hearing arguments of both parties and perusal of record, Authority observes that Part Completion Certificates granted to respondent by Department of Town & Country Planning, Haryana on 18.11.2013 is only qua the project and does not establish development of basic infrastructure qua the complainant's plot. Neither of the party has placed on record any photograph/ documents revealing existence of basic infrastructural facilities at plot site. Thus, in absence of Completion Certificate/Part Completion Certificate qua complainant's plot, it will be presumed that complainant's plot is not covered under said Part Completion Certificate and the colony as well as plot is not habitable/ready for usage. Further, it cannot be ascertained from copy of Part Completion Certificate dated 18.11.2013 annexed by the respondent with his reply that plot of complainant falls under it. Moreover, no justification has been given by respondent as to why plot was offered to complainant on 14.09.2018 when allegedly he had received Part Certificate on 18.11.2013. In such circumstances, offer for possession letter dated 14.09.2018 qua plot, issued without receipt of its Part Completion Certificate cannot be deemed to be a legal offer. Thus, respondent has failed to prove that basic infrastructure qua the plot has been developed; Completion Certificate/Part Completion

Certificate qua complainant's plot has been received and the colony is habitable and ready for usage.

Meanwhile, the factum of receipt of Part Completion Certificate qua the project on 18.11.2013 cannot be ignored. Receipt of Part CC by respondent implies that respondent has already invested substantial amount paid by allottees/ complainant towards development of the project. Therefore, no case for refund is made out at this stage. Further, refund of amount paid by the complainant at this stage will also encourage other allottees to withdraw from the project and seek refund which would adversely affect completion of the project. Therefore, request of the complainant for refund of amount deposited by her cannot be accepted as same will adversely affect the project. Therefore, Authority observes that complainant cannot be allowed refund of the amount paid by her.

Nevertheless, as per provisions of section 18 of The RERA Act, 2016, respondent promoter is liable to pay interest to the complainant as per Rule 15 of the HRERA Rules, 2017, on account of delay caused in handing over of possession from deemed date of possession i.e. 28.12.2009 till the date of receipt of Part Completion Certificate/ Completion Certificate qua complainant's plot.

Further as per provisions of section 18 of The RERA Act, 2016, accrued interest on account of delay caused in handing over of possession from deemed date of possession up to the date of passing this order shall be

paid upfront within 90 days and monthly interest thereafter up to receipt of Part Completion Certificate/ Completion Certificate qua complainant's plot shall also be paid. Both amounts will be worked out as per Rule 15 of the HRERA Rules, 2017.

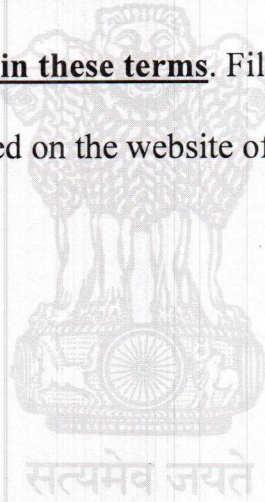
4. Admittedly, complainant has paid total amount of Rs. 48,34,970/- which includes the amount of Rs. 7,95,000/- towards EDC. The amounts of EDC are collected by the promoter for payment to the department/authorities entitled to receive it for carrying their statutory obligations. If a builder does not 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. 40,39,970/- (Rs. 48,34,970/- — Rs. 7,95,000/).

5. As per calculations made by Accounts Branch, amount payable by the respondent to the complainant on account of interest for delay in handover of possession of the plot from the deemed date of delivery up to the date of passing of this order has been worked out to Rs. 49,86,386/- . Authority orders, upfront payment of **Rs. 49,86,386/-** be made to the complainant on account of delay caused in offering possession within 90 days and further monthly interest @ **Rs. 32,993/-** will be paid to the complainant by the respondent w.e.f. 29.07.2022 till the date a legally valid offer of possession is

made after receipt of Part Completion Certificate/ Completion Certificate qua complainant's plot.

6. Respondent is directed to make a legal offer of possession only after after receipt of Part Completion Certificate/ Completion Certificate qua complainant's plot. Said offer letter shall be accompanied with statement of accounts showing payables and receivables at that time. Respondent is directed to issue said statement of accounts strictly as per provisions of THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 and principles laid down by the Authority and may adjust receivables accordingly.

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]