

BEFORE THE REAL ESTATE REGULATORY AUTHORITY, PANCHKULA

Complaint No.: 03/2018- Sanjay Saini **Versus** M/s
Express Home Pvt. Ltd.

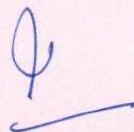
Date of hearing: 28.08.2018, 7th Hearing

Present:

1. Shri D.K. Pandey Advocate on behalf of complainant.
2. Shri Kamal Dahiya Advocate on behalf of respondent.

Order:

1. The present complaint is being disposed through this final order. The matter was first heard on 08.03.2018 when none appeared on behalf of the respondent. Thereafter it was heard on 27.03.2018. On the subsequent hearings, respondent sought adjournments to file his reply, which were granted subject to payment of costs of Rs. 1,000/- to the complainant and Rs. 2,000/- payable to the authority. Further on hearing dated 24.05.2018 the respondent sought adjournment for an amicable settlement. On the hearing dated 02.07.2018 it was brought to the notice of Authority that no settlement could be arrived at and further the respondent sought adjournment for filing reply. On the hearing dated 09.07.2018, complainant was burdened with costs of Rs.2,000/- payable to the respondent and Rs.5,000/- payable to the Authority, seeking



adjournment without any reason. Costs were paid today to the Authority as well as to the respondent. The parties, have agreed to settle the matter through mutual consent by taking steps in furtherance of the same, The averments with respect to which are elaborated at length in this judgement.

2. The case of the complainant is that in May, 2011 he booked a unit measuring 125 sq. Mtrs., in the real estate project 'Express Homz, Sector-35 Sonapat' which was to be developed by the respondent M/s Express Projects Pvt. Ltd. Booking amount of Rs.25,92,000/- was paid by the complainant, following which, one allotment letter was issued by the respondent on 01.12.2011. Total amount paid by the complainant is Rs. 30,08,590/- The complainant was allotted Unit No. E/25/Second Floor in Express Homz, Express City. The expected date of delivery of possession was May 01, 2014. The respondent issued possession letter dated 21.02.2015 and 05.09.2017, which the complainant denied on grounds, that the respondent had not obtained occupation certificate and completion certificate from the competent authority. He termed the said offer of possession 'illegal' for the reason that on that date occupation certificate had not been obtained. Further, it was stated by Ld. Counsel for the complainant that the unit offered was not fit for



living. Moreover, it is stated that several demands along with interest for late payments were made by the respondent, which according to the complainant were unwarranted. Reading from Appendix – F, wherein the complainant seeks the following reliefs:

- 2.1 Registry of the said unit, along with physical possession with occupation certificate and line marked for car parking space.
 - 2.2 Additional deposit of Rs. 80,000/- payable as interest on late payment to be withdrawn.
 - 2.3 Compensation for delay in delivery (@ Rs. 5 per square feet per month, which is calculated to be Rs. 2,63,250/-).
 - 2.4 In addition to all the above, compensation under various heads based on principles of natural justice.
3. The reply of the respondent states that the complainant was offered possession in the year 2015, which the complainant did not accept, whereas at the same time possession was offered to several other allottees which was accepted and they have been residing there since then. It was also stated that the respondent had obtained No Dues Certificate from DTCP. Ld. Counsel for Respondent Sh. Kamal Dahiya stated that the respondent had applied for Occupation certificate of the unit allotted to the complainant on 12.08.2014 before DTCP Haryana. The occupation certificate was



granted on 05.12.2017. Further, that throughout the period between application and the actual grant of occupation certificate the respondent has been sincere and taken all necessary steps from his end. It was also stated that the respondent had applied for occupation certificate after all the development work was complete. Further, that there has been default by the complainant in making payments on various occasions. Moreover, the respondent sent various letter reminding the complainant for delivery of possession dated 28.05.2015, 11.01.2016 and 11.04.2016. The complainant also approached Deputy Commissioner, Sonapat, to seek waiver of the charges for delayed payments, as a result of the deliberation at the level of Deputy Commissioner, the interest amount of Rs. 2,08,938/- was reduced to a sum of Rs. 80,000/-.

4. Arguments of the both the sides have been heard and written pleadings have been perused. It is observed that the respondent had procured the completion certificate of the said project in the year 2013 and obtained No Dues Certificate from DTCP. Further, the said project was applied for renewal in on 18.11.2013, such application was made before the expiry of the said license, which was renewed on 16.06.2015 by DTCP Haryana. Further, the respondent had applied for Occupation Certificate of the said unit



on 12.08.2014, to DTCP Haryana. At the time of such application being made none of the approvals were pending. It is further observed that the respondent had been actively pursuing his application for obtaining occupation certificate, therefore the delay in grant cannot be attributed to the respondent.

4.1. The argument of the Ld. Counsel for the complainant is , that when the respondent offered possessions of the said unit, he had not obtained an occupation certificate from the concerned Authority. It is observed that this matter is internal between the department and the developer only to ensure that the basic services have been laid as per the plans. The offer of possession could only be deemed illegal if the occupation certificate was eventually denied to the developer. Therefore, for reasons aforementioned the offer of possession cannot be termed illegal. After presenting their arguments, both the parties agreed to settle the matter with mutual consent.

4.2. In the given circumstances, the Authority directed the respondent to issue a fresh offer possession of the said unit to the complainant within 30 days. The apartment should be complete in all aspects and all facilities should be running at the time of delivery of possession. The complete possession



is directed to be handed over by September 30,2018. Further, the complainant is directed to handover stamp papers to the respondent within 15 days of obtaining possession, with further direction to the complainant to complete the registry of the said unit in the office of Tehsildar within 7 days i.e. by October 25, 2018. The Authority further directed the respondent to issue a fresh statement of Accounts, with separate columns of debit and credit, containing details of the amount to be recovered by the respondent from the complainant and the amount payable by the respondent to the complainant respectively, within a time frame of 30 days. It is expected that the respondent will settle the matter in the same spirit as shown today at the time of proceeding. The Authority further reserves the right of the complainant to approach this Authority in case the complainant still feels aggrieved.

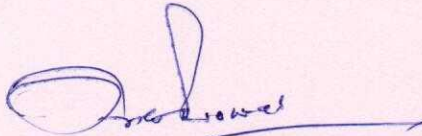
5. Even though the respondent had also challenged the jurisdiction of this Authority, but then he agreed to settle the matter with mutual consent, therefore this issue of jurisdiction has not been dealt here specifically. The Authority however observes that it has jurisdiction to deal with such matters as has been ruled by it in Complaint No, 144/2018 Sanju Jain Vs. TDI Infrastructure Limited.



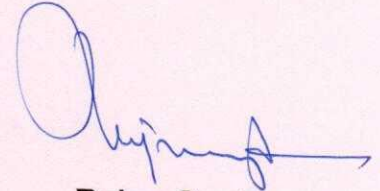
6. This matter is disposed off, with the above directions to the complainant and the respondent.



Dilbag Singh Sihag
Member



Anil Kumar Panwar
Member



Rajan Gupta
Chairman
