



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 515 OF 2022

Parvesh Jain

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited.

....RESPONDENT(S)

COMPLAINT NO. 516 OF 2022

Parvesh Jain

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 29.07.2022

Hearing: 2nd (in Complaint No.s 515-2022 & 516-2022)

Present: - Mr. Arjun Kundra, Ld. Counsel for the complainant through VC.

(in Complaint No.s 515-2022 & 516-2022)

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

(in both complaints)

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. Both the captioned complaints are being disposed of through this common order for the reason that core issues involved in both cases are identical.

Both cases pertain to the same project of the respondent i.e. 'TDI City' at Kundli, Sonapat. This order is being passed in view of the facts of lead **Complaint case no. 515 of 2021 Parvesh Jain vs TDI Infrastructure Ltd.**

2. Initiating his arguments, learned counsel for complainant stated that complainant had booked a shop in the project named 'TDI CITY', of the respondent at Sonapat on 09.12.2006. Shop no. GF-73 A measuring 771.15 sq. fts. was allotted to him. He had paid Rs. 7,80,800/- as booking amount on 09.12.2006 against total sale consideration Rs. 52,05,262/-. Complainant has attached an undated Builder Buyer Agreement. No date of delivery of possession of shop was mentioned in the said agreement. Thereafter, complainant received a letter dated 27.09.2008 vide which respondent cancelled his allotment on account

of non-payment of installments as per demands raised by respondent. As per version of complainant, respondent had not raised any demand after payment of initial booking amount paid by complainant in Dec, 2006. Aggrieved on account of said illegal cancellation by respondent, complainant filed a consumer complaint before Ld. District Consumer Disputes Redressal Forum, Sonapat seeking refund of amount paid by him along with interest. Ld. District Consumer Disputes Redressal Forum, Sonapat (herein after referred to as Forum) allowed refund along with interest vide its order dated 08.12.2014. Respondent filed appeal which was dismissed by Hon'ble State Consumer Disputes Redressal Commission (herein after referred to as SCDRC) vide order dated 18.11.2015. Respondent filed revision petition before National Consumer Disputes Redressal Commission (herein after referred to as NCDRC) against order dated 18.11.2015 passed by Hon'ble SCDRC. Hon'ble NCDRC allowed revision petition vide its order dated 03.05.2016, holding that complainant is an investor and not a consumer. Complainant filed Review application before Hon'ble NCDRC which was dismissed vide order dated 14.08.2018 with liberty to approach appropriate court.

Learned counsel for the complainant stated that in furtherance of liberty granted by Hon'ble NCDRC vide order 14.08.2018, complainant has filed this complaint before Authority seeking refund of Rs. 7,80,800/- along with interest as per Rule 15 of the HRERA, Rules 2017 on account of unfair cancellation of



shop without giving any notice; raising any demand; and without returning the amount paid by him.

3. In rebuttal, learned counsel for respondent argued that complainant is an investor and not a genuine consumer as held by Hon'ble NCDRC vide order dated 14.08.2018. Therefore, present complaint is not maintainable before the Authority. Moreover, complainant has filed this complaint after fourteen years of cancellation, therefore, it is barred by law of limitation. Learned counsel for respondent while admitting payment made by complainant stated that the project has already been developed for which Part Completion Certificate was granted by the Department of Town & Country Planning, Haryana on 23.01.2008, 18.11.2013 and 22.09.2017. He further stated that respondent was granted Occupation Certificate on 25.05.2012 by department concerned. Further, respondent had cancelled the allotment vide letter dated 27.09.2008 on account of non-payment of dues. He stated that as per cancellation policy 20% of total sale consideration is to be deducted as earnest money. Since complainant had deposited only Rs. 7,80,000/- which was less than 20% of total sale consideration, therefore, whole amount deposited by complainant was forfeited and the same was also mentioned in the cancellation letter dated 27.09.2008.

4. After hearing both parties and perusal of records of the case, Authority observes that The RERA Act, 2016 the term 'allottee' under section 2(d). As per definition, "allottee" in relation to a real estate project, means the

person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;" Thus, complainant falls under the definition of 'allotee' under the RERA Act, 2016, irrespective of the fact that complainant is an investor or not. Even , Hon'ble NCDRC has granted liberty to the complainant to seek remedy in an appropriate forum/civil court. Relevant part of Order dated 14.08.2018 passed by Hon'ble NCDRC dismissing review application filed by complainant is reproduced below:

" The sum and substance of the order dated 03.05.2016 is that the complainant is an 'investor' and not a 'consumer'; it has also been made explicit that complainant is at liberty to seek remedy in an appropriate forum/civil court."

Hence, in view of observation made by Hon'ble NCDRC and liberty granted by it vide order dated 03.05.2016 and 14.08.2018, Authority is well within its jurisdiction to hear the matter and it on its merits.

5. Authority further observes that respondent had cancelled allotment of shop of the complainant vide letter dated 27.09.2008 without raising any demand from complainant as no document showing alleged demands raised by

respondent to pay installments after Dec, 2006 has been placed on record by respondent. Thus, respondent has failed to prove that any demand was ever raised by him after receipt of booking amount in Dec,2006. Even, no proof has been placed on record by respondent showing issuance of any notice to complainant qua said cancellation. Complainant on the other hand, who is aggrieved on account of said illegal cancellation by respondent, litigated before various consumer foras starting from District Consumer Disputes Redressal Forum, Sonapat to National Consumer Disputes Redressal Commission, New Delhi. He has been working hard to press for his rights.

In such circumstances, Authority observes that said cancellation of allotment of shop of complainant by the respondent in absence of any demand letter having been issued was without justification. No proof has been placed on record by respondent showing issuance of any notice to complainant qua said cancellation. Therefore, said cancellation was illegal, unfair and arbitrary. It clearly is a case of continuing contract. Respondents are yet to discharge their lawful obligations. Plea of the respondent that complaint is time barred also does not survives as cancellation of the shop of complainant was illegal and respondent had failed to return amount deposited by complainant till date and is still using said amount without any justification. It is reiterated that it is a continuing contract. In such circumstances, deduction of whole amount paid by complainant against earnest money also stands dismissed.

In these circumstances, when respondent has cancelled allotment without raising any demand from the complainant; without giving due notice to the complainant qua cancellation; and has been using the amount deposited by the complainant for the last sixteen years without any reasonable justification, Authority finds it to be a fit case for allowing refund of the amount paid by the complainant and directs the respondent to refund amount 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. Therefore, complainant is entitled to refund of Rs. 7,80,800/- along with interest on the amount paid by him from the date of making payments till realization of the same.

6. In Complaint No. 515-2022, as per verification by Accounts Branch, amount payable by the respondent to the complainant along with interest till the date of this order has been worked out to Rs. 19,78,341/- (Rs. 7,80,800/- + Rs. 11,97,541/-) till date. Therefore, Authority directs the respondent to refund Rs. **19,78,341/-** to the complainant.

7. In Complaint No. 516-2022, as per verification by Accounts Branch, amount payable by the respondent to the complainant along with interest till the date of this order has been worked out to Rs. 36,68,967/- (Rs. 14,50,000/- + Rs. 22,18,967/-) till date. Therefore, Authority directs the respondent to refund Rs. **36,68,967/-** to the complainant.

8. The respondent shall pay entire amount in both cases to the complainant within 90 days of uploading this order on the web portal of the Authority.

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



.....
RAJANGUPTA
[CHAIRMAN]

.....
DILBAG SINGH SIHAG
[MEMBER]