



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 713 OF 2021

Ashu Gupta

....COMPLAINANT

VERSUS

TDI Infrastructure Pvt. Ltd.

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 05.08.2022

Hearing: 9th

Present: - Mr. Purav Middha, Ld. Counsel for the complainant through
VC.

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

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. On perusal of record it is observed that this is 9th hearing of the case. On seventh hearing i.e. 17.05.2022, Authority has already captured facts of the case and made following observations after hearing verbal as well as written submissions of both parties:

“1. Case of the complainant is that complainant had booked a commercial plot in the project named “TDI City” of the respondent situated at Sonipat on 06.01.2006. Plot No. JC-1/9 measuring 204 sq. yds. was allotted to him. No Builder Buyer Agreement (hereinafter referred to as BBA) was executed between parties. In certain similar cases respondent had assured allottees to deliver possession of plots within three years from the date of booking. After taking entire consideration amount, delivery of possession should have been given within reasonable period of time which in such cases is three years. Thus, learned counsel for the complainant pleaded that even in the present case since no agreement has been executed by the respondent, therefore, the deemed date of delivery of plot should be taken as three years from the date of booking, meaning thereby that complainant’s plot should have been delivered to them by January, 2009. Complainant has paid Rs. 48,04,200/- against basic sale consideration of Rs. 43,86,000/-.

2. Learned counsel for the complainant further stated that respondent had offered him possession of the plot on

19.04.2017. Said offer was made after delay of about eleven years from the date of booking accompanied with an unreasonable additional demand of Rs. 5,92,704/-. He further pointed out that as reflected vide Parking Ticket dated 29.04.2017 attached in the rejoinder, complainant visited the site on 29.04.2017 i.e. after receipt of offer for possession dated 19.04.2017. To his utter dismay, the plot as well as the project lacked even basic infrastructural facilities. There were only kuchcha roads, no electricity, water, sewerage connections were laid in the project. Therefore, on account of multiple defaults on the part of respondent, complainant may be allowed refund of Rs. 48,04,200/- along with interest as per Rule 15 of the HRERA, Rules 2017.

3. Learned counsel for respondent stated that 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. Respondent had offered possession of the said plot to the complainant on 19.04.2017. He stated that development basic infrastructural facilities qua the plot of the complainant is complete. Complainant is not coming forward to take possession after payment of outstanding amount.

4. After hearing arguments of both the parties and perusal of record, Authority observes that both parties are giving conflicting statements regarding existence of basic infrastructural facilities in the project. In such scenario, both parties are directed to file photographs as well as documents reflecting development of basic infrastructural facilities qua

the plot. He shall also file status of Part Completion Certificate qua plot of complainant. Aforesaid information shall be filed within two weeks with an advance copy to the complainant. In case, respondent fails to establish that the development of plot is complete along with basic infrastructural facilities, the Authority will consider it to be a fit case for allowing refund of the amount paid by the complainant and will proceed to grant refund of the amount paid to 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 the order on the next date of hearing.

5. Case is adjourned to **31.05.2022** with a direction to the respondent to file aforesaid information along with report of the Chief Engineer, HUDA confirming that basic infrastructural facilities/ services have been laid down by the respondent qua the plot and also supply its copy to the complainant at least one week before the next date of hearing. No further opportunity will be granted.”

2. On eighth hearing of the case i.e. on 31.05.2022, Authority ordered appointment of Local Commissioner to ascertain existence of basic infrastructural facilities at plot site and to evaluate overall existing condition of infrastructural facilities of the project. Relevant part of aforementioned order dated 31.05.2022 is reproduced below:



“3. Learned counsel for respondent is seeking permission to withdraw aforesaid application filed on 30.05.2022 along with documents on the ground that he has wrongly annexed photographs pertaining to some other plot instead of plot of the complainant. He further stated that he has already annexed Part Completion Certificate granted by the Department of Town & Country Planning, Haryana dated 23.01.2008, 18.11.2013 and 22.09.2017 along with reply filed by him as Annexure R-2, Annexure R-3 and Annexure R-4. Learned counsel for respondent also submitted that basic infrastructural facilities qua the plot of the complainant have been developed.

4. Learned counsel for the complainant denied existence of basic infrastructural facilities at site. He stated that only kuchcha roads have been laid and other basic infrastructural facilities have not been laid at the site.

5. In such circumstances, Authority observes that since both parties are giving conflicting statements regarding development of basic infrastructure of the plot and neither party has proved its case by placing on record any corroborating evidence in support of their arguments,



therefore, Authority deems it appropriate to appoint a Local Commissioner to ascertain existence of basic infrastructural facilities at plot site and to evaluate overall existing condition of infrastructural facilities of the project. Local Commissioner shall inspect the site in question in the presence of the both parties and inform the parties in advance of the date on which he would inspect the plot/site. Parties are directed to be present on the plot site on the date of inspection. Local Commissioner shall file his report regarding status of existence of basic infrastructural facilities at plot site and existing condition of the project within fifteen days of his appointment, with advance copies given to the parties. In case, report submitted by Local Commissioner depicts lack of development of basic infrastructural facilities at plot site due to which construction and habitation on said plot is not feasible then respondent will be deemed to at fault and he will bear entire expenses of Local Commissioner, and vice versa.”

3. M/s Protech Consortium was appointed as Local Commissioner vide letter dated 20.06.2022 in compliance of order dated 31.05.2022. Expenses of Local Commissioner were ordered to be borne by the party who

will be found at fault as per report of LC. Local Commissioner i.e. M/s Protech Consultant, Kurukshetra has filed its report on 18.07.2022 in compliance of the said order along with bill. Bill raised by the local commissioner amounts to Rs. 41,300/- inclusive of GST. Fee of Local Commissioner was remitted by the Authority on 25.07.2022. Respondent is directed to remit Rs. 41,300/- i.e. fee of local commissioner to the Authority as same has already been paid to Local Commissioner by Authority.

4. Local Commissioner has submitted his report on 18.07.2022, whereby he has given details regarding existing condition of the project as well as status of completion of units of complainant i.e. Plot No. JC-1/9. Relevant part of the Report submitted by Local Commissioner dated 18.07.2022 is reproduced as below:

**“1. Existence of basic infrastructural facilities at plot site,
JC 1/9**

The site of the plot was opposite village Nangal Kalan across a proposed partly constructed main road of the TDI City (Annexure-I, photo 3). The so-called main road was four laned, in bad shape and as existing in pieces across its entire length. A large number of patches of land where road is to be constructed were still under possession of private persons and under active

cultivation (Annexure-I, photo 1, 2). It was a remote area hardly having any unhindered motorable approach from main gate of TDI City complex. A service lane was existing in front of the plot under question (Annexure-I, photo 4). No signages were available so local enquiry and identification by the representative of complainant had to be relied upon. He too had no approved plan of that portion of the TDI City. No street light was in working (Annexure-I, photo 4). There were no sewerage, water supply or electricity connections available to the plot (Annexure-I, photo 6).

2. Condition of infrastructural facilities of the project

Block J of TDI City, where the instant commercial plot was situated, was one of the number of blocks on both sides of aforesaid main road existing in pieces. Almost all the blocks along this main road were totally undeveloped. Only part of Block J near plot number JC-1/9 was having roads, some residences built up by TDI for sale and an overhead water tank (Annexure-I, photo 5). Rest of the block was undeveloped. The builtup residences were also not inhabited due to lack of all basic amenities. Sufficiently large areas within the project

were cultivated and seemed not to be under possession of the respondent builders (Annexure-I, photo 2). Water tank was not in use, electricity connection was not available, sewerage, STP and street lights were also not available. Local enquiry revealed that electricity connections could be available only after a centralized power house is built by the developers. Overall, the project is thus not complete to the full or habitable extent in this part of TDI City.”

5. After hearing arguments of both parties, perusal of record, and report submitted by local commissioner, Authority observes that the basic infrastructure is not developed at site as proved from the report of Local Commissioner. Roads are in pathetic condition and exist in patches. Some part of roads is under possession of private persons and active cultivation. Further, whole area is reported to be remote without any unhindered motorable approach from main gate of TDI City complex. No signages or other means of identification of plots existed at site. Basic infrastructural facilities like sewerage, water supply or electricity connections were not available at plot site. So, is the case of Street lights which were found to be non-functional. Thus, it is established that the project is neither complete nor habitable as proved by photographs attached with report as Annexures-I & II.

6. Furthermore, Authority has also laid down a criteria as to what should be called lawful offer/ handing over of possession in **Complaint Case No. 903 of 2019- Sandeep Goyal Vs. Omaxe Ltd.** In aforesaid case, Authority held that plot /apartment after its completion must have received Completion Certificate/ Occupation Certificate from department concerned that all basic facilities have been laid and are operational. Secondly plot/ apartment must be habitable and if infrastructural facilities are non-operational then it shall be deemed to be uninhabitable and the offer of possession or handover of possession will not be considered to be legal.

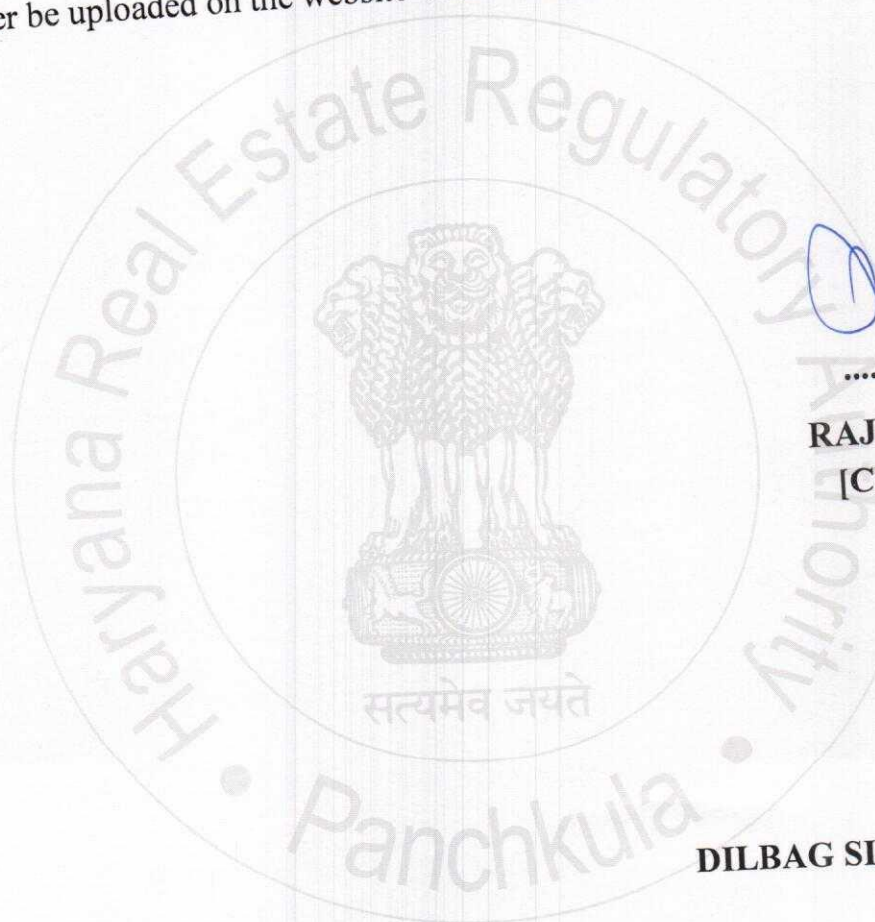
In view of aforesaid judgment and as per report submitted by Local Commissioner, it is held that plot of the complainant is uninhabitable and offer letter dated 19.04.2017 cannot be deemed to be proper and legal. Therefore, complainant is entitled to refund of amount paid by him along with permissible interest. Thus, Authority finds it to be a fit case for allowing refund of the amount paid by complainant and directs the respondent to refund entire 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.

7. Admittedly, complainant has paid total amount of Rs. 48,04,200/-. Thus, as per calculations made by Accounts Branch, amount payable by the respondent to the complainants along with interest has been worked out to Rs. 1,14,27,225/- (Rs. 48,04,200/- + Rs. 66,23,025/-).

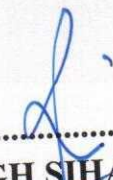
Therefore, Authority directs the respondent to refund Rs. 1,14,27,225/- to the complainant.

8. Respondent shall pay entire amount to the complainant within 90 days of uploading this order on the web portal of the Authority.

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




RAJAN GUPTA
[CHAIRMAN]


DILBAG SINGH SIHAG
[MEMBER]