



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1005 OF 2021

Vijay Chaudhary and Nidhi Gupta

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited.

.....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 04.08.2022

Hearing: 3rd

Present: - Mr. Inder Kumar Dang, Ld. Counsel for the complainants through VC.

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

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. Initiating his pleadings, learned counsel for the complainants stated that Original allottee booked a plot in the project named "TDI City" of the

respondent situated at Panipat in March, 2005. Plot was transferred in favour of complainants in March, 2005. Plot No. L-813, measuring 250 sq. yds. was allotted to complainants on 29.04.2006. No Builder Buyer Agreement (hereinafter referred to as BBA) was executed between parties. Complainant has paid Rs. 17,13,097/- against basic sale consideration of Rs.14,38,750/-. No date of delivery of possession was given by the respondent. In certain similar cases, respondent had assured the allottees to deliver possession of plots within three years from the date of making substantial payments by the complainant. Thus, learned counsel for the complainants pleaded that even in the present case since no date of delivery of possession has been mentioned by the respondent, therefore, the deemed date of delivery of plot should be taken as three years from date of making substantial payments which was 24.02.2007, meaning thereby that complainant's plot should have been delivered to them by 24.02.2010.

Main grouse of the complainants is that respondent has failed to deliver possession of plot to the complainants even after lapse of about seventeen years from the date of booking. Therefore, complainants sent legal notice dated 10.12.2020 seeking refund of amount paid by them along with interest. Respondent replied to their legal notice vide letter dated 10.01.2021, whereby they admitted that original plot is not available due to unavoidable reasons, and they are willing to offer an alternate plot. Thus, respondent has failed to perform his contractual obligation to deliver possession of booked plot to complainants.

Learned counsel for the complainants stated that Complainants do not wish to take delivery of any alternate plot. Therefore, complainant is seeking refund of Rs. 17,13,097/- along with interest as per Rule 15 of the HRERA, Rules 2017.

2. Learned counsel for the respondent stated that though the project has already been developed and Part Completion Certificate has been granted by the Department of Town & Country Planning, Haryana on 23.01.2008, 18.11.2013 and 22.09.2017, but plot originally allotted to the complainants is not developed because due to certain unavoidable reasons. Respondent vide its letter dated 10.01.2021 had informed complainants that he was unable to deliver originally allotted plot to them. Respondent had offered alternative plot to complainants vide letter dated 19.03.2019 but complainants did not come forward to avail the same.

3. After hearing arguments of both parties and perusal of record, Authority observes that admittedly respondent is unable to deliver originally allotted plot to the complainants as per letter dated 10.01.2021. In alternative, respondent has offered the complainants to choose another plot. In such circumstances, complainants could either opt to take possession of another similarly situated alternate plot of their choice or withdraw from the project by taking refund of the amount paid by them along with interest. Relief of possession of particular allotted plot is not possible to be granted to the complainants as



respondent is not in a position to deliver originally allotted plot to the complainants.

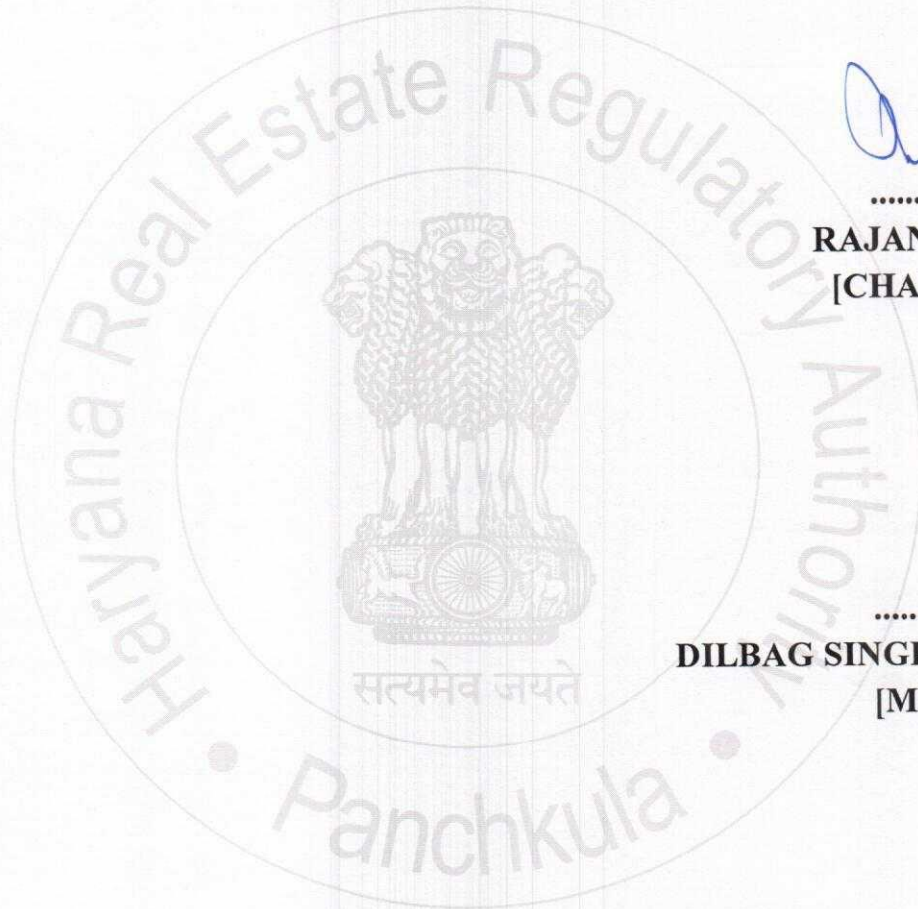
Complainants do not want to relocate to alternate plot. Alternate plot can be offered only with express consent of the allottee. Authority cannot force an allottee to accept alternate plot when originally booked plot cannot be delivered. In a situation, if allottee seeks refund, the same must be granted.

In nutshell, when respondent is not able to deliver originally allotted plot to the complainants and meanwhile he has been using amount deposited by the complainants for last seventeen years without any reasonable justification, Authority finds it to be a fit case for allowing refund of the amount paid by the complainants and directs respondent to refund Rs. 17,13,097/- paid by the complainants 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.

4. As per receipts attached by complainants, they have paid Rs. 17,13,097/- to respondent. As per calculations made by Accounts Branch, amount payable by the respondent to the complainants along with interest till the date of this order has been worked out to Rs. 40,68,385 /- (Rs. 17,13,097/- + Rs. 23,55,288 /-) till date. Therefore, Authority directs the respondent to refund **Rs. 40,68,385 /-** to the complainants.

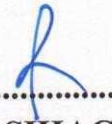
5. Respondent shall pay entire amount to the complainants within 90 days of uploading this order on the web portal of the Authority.

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





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RAJANGUPTA
[CHAIRMAN]



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DILBAG SINGH SIHAG
[MEMBER]