



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 977 OF 2021

Urmila Devi

....COMPLAINANT

VERSUS

TDI Infrastructure Pvt. Ltd.

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 04.08.2022

Hearing: 5th

Present: - Mr. Sulabh Jain, Ld. counsel for the complainant through VC.
Mr. Shubhmit Hans, Ld. counsel for the respondent through VC.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. Initiating his arguments, learned counsel for the complainant stated that complainant had booked a shop in the project named "Rodeo Drive-TDI City" of the respondent situated at Sonipat in May, 2006. Shop No. -153, measuring 500 sq. fts. was allotted to complainant on 31.08.2006. Builder Buyer Agreement (hereinafter referred to as BBA) was executed between

parties on 08.01.2010. As per terms of BBA, respondent had to deliver possession of the shop to the complainant by 08.07.2012. Complainant has paid already Rs. 22,00,000/- against basic sale consideration of Rs. 27,50,000/-.

Complainant waited for delivery of possession of shop between 2012 till the year 2018 but respondent failed to deliver possession of shop. Therefore, complainant filed a complaint before Hon'ble State Consumer Disputes Commission, Delhi which was withdrawn by him on 01.12.2021. Learned counsel for the complainant further stated that respondent has offered fit out possession of the shop to the complainant on 20.03.2019. Said offer was made after delay of approximately thirteen years after the date of booking and is accompanied with unreasonable additional demands on account of increase in area; external development charges; internal development charges; interest on delayed payments; maintenance charges; VAT & GST charges which are not acceptable to complainant. Therefore, complainant is seeking possession of the shop along with interest as per Rule 15 of the HRERA, Rules 2017 and quashing of unreasonable additional demands.

2. In rebuttal, learned counsel for the respondent has denied allegations made by complainant on the ground that project was granted Part Completion Certificates by Department of Town & Country Planning, Haryana on 23.01.2008, 18.11.2013 and 22.09.2017. Occupation Certificate

qua the project was also received from concerned department vide letter dated 12.06.2019. Respondent had offered fit out possession of the said shop to the complainant on 20.03.2019. He stated that the shop of the complainant is complete and ready for usage but complainant has not come forward to take possession of shop.

3. After hearing arguments of both the parties and perusal of record, Authority observes that respondent has received Part Completion Certificate for the said project on 23.01.2008, 18.11.2013 and 22.09.2017. Occupation Certificate for said shop was also granted by Department of Town & Country Planning, Haryana on 12.06.2019. Respondent has offered possession to the complainants on 20.03.2019. Complainant is willing to take delivery of possession of shop.

In such scenario, Authority observes that complainant is entitled to interest for the delay caused by respondent in offering possession at the rate prescribed in Rule 15 of HRERA Rules, 2017. Date of receipt of Occupation Certificate by the respondent from the Department of Town & Country Planning, Haryana i.e. 12.06.2019 shall be taken as valid offer of possession. Accordingly, respondent is liable to pay interest for delay in delivery of possession for the period starting from the deemed date of possession i.e. 08.07.2012 upto the date of receipt of Occupation Certificate i.e. 12.06.2019. It is further directed that period between date of receipt of Occupation

Certificate i.e. 12.06.2019 and date of order i.e. 04.08.2022 shall be treated as zero period for both parties for purposes of no charges/interest would be receivable/payable for said period.

4. Since, complainant has paid total amount of Rs 22,00,000/- which has been admitted by the respondent. 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 shop from the deemed date of delivery up to date of receipt of Occupation Certificate i.e. 12.06.2019 has been worked out to Rs. 14,95,024/-. The Authority orders that upfront payment of **Rs. 14,95,024/-** be made to complainant on account of delay caused in offering possession within 90 days of uploading of this order on the web portal of the Authority.

5. Complainant has raised objection against certain additional demands raised by respondent vide 20.03.2019. As far as issue of quashing of impugned demands raised by the respondent vide said offer letter dated 20.03.2019, Authority observes as follows:

i. **Value Added Tax (VAT):**

Value Added Tax is the tax paid to the State Government. On perusal of record, it is inferred that as per Article 14 of the agreement provides "purchaser shall be liable to pay the Property tax for the said unit and any other taxes

including Service Tax and not limited to the proportionate charges to EDC and IDC as and when the demand arises from the local authorities”.

Thus, a plain reading of this clause indicates, that the charges on account of VAT were not quantified at the time of agreement but the same were admitted to be payable by the complainant on demand from the company. Since VAT charges have been quantified and demanded by the company through the final account statement which amount to Rs. 23,100/-, same are justified and hence allowed.

ii. **Miscellaneous Expenses (ME):**

Learned counsel for the respondent stated that this amount has been charged on account of the fee payable to the advocate for carrying out registration formalities etc. It is ordered that in case complainant does not wish to engage any advocate to carry out registration formalities, the demand of Rs. 10,000/- made by the respondent towards “Miscellaneous charges” shall be withdrawn.

iii. **Interest on delay in payment of instalment:**

The complainant is also aggrieved on account of demand of Rs. 5,41,876/- as interest on delay in making payment of due instalments. The Authority has observed that in the present case respondent has himself failed to offer possession of shop till March, 2019 as against his commitment in the year 2012. Till date complainant has not received possession of the shop. As such, it is respondent who is liable to pay interest to complainant for the delay caused by him in handover of possession of shop. Thus, demand of Rs. 5,41,876/- as interest on delay in making payment of due instalments is arbitrary, unfair and unjustified. Therefore the Authority, quashes demand of Rs. 5,41,876/-.

iv. **Interest Free maintenance Security (IFMS):**

The Authority vide order dated 01.04.2021 in Complaint No. 464 of 2019 titled Kanwar Singh vs Mudra Finance Ltd. has laid down certain principles in regard to IFMS, according to which IFMS is a non-refundable interest free security contributed by the allottees for carrying out capital works in future. Thus, extra money collected on account of IFMS has to be handed over by promoter to Association of allottees. IFMS is

over and above the basic sale consideration and it cannot be utilized by the promoter.

Thus, IFMS money is payable by the complainants. However, the respondents shall deposit it in a separate interest earning account. Further till taking over of the project by RWA, the builder-respondents shall render periodic account of income and expenditure made out of this account to the general body of residents of the colony. Therefore, the amount charged from complainants on account of "Interest Free Maintenance Security" is upheld subject to aforesaid condition.

v. **Goods and Service Tax (GST) :-**

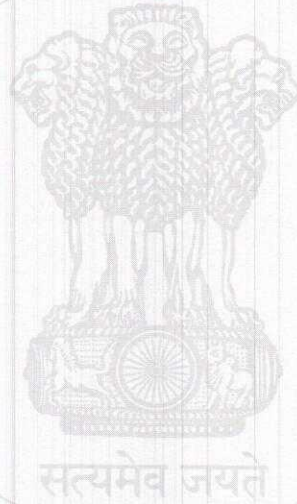
Another grievance of complainant is that respondent is charging Goods and Service Tax (GST). The Government has introduced the GST in the year 2017 and since deemed date of possession in the present cases falls in the year 2012 i.e. before coming into force of GST, demand of Rs. 93,918/- raised by respondent as GST charges from the complainant is illegal and are quashed.

No other relief was pressed by learned counsel for the complainant.



6. Respondent shall handover possession of shop to complainant as well as issue fresh statement of accounts within 30 days of uploading of this order. Respondent is directed to issue a fresh statement of accounts strictly as per provisions of THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 and aforesaid principles laid down by the Authority.

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



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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]