



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2153 OF 2019

Ram Bilas Garg

....COMPLAINANT(S)

VERSUS

TDI Infracorp(India) Limited.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 10.08.2022

Hearing: 10th

Present: - Ms. Varuna Singh, Ld. Counsel for complainant through VC.

Mr. Ajay Ghangas, Ld. Counsel for respondent through VC.

ORDER (DILBAG SINGH SIHAG -MEMBER)

1. Initiating his arguments, learned counsel for the complainant stated that complainant had booked a flat in the project named "Waterside Floors in Lake Grove City" of the respondent situated in Kundli, Sonapat on 22.04.2013. Flat No. WF-123/TF measuring 1400 sq. fts. was allotted to complainant on 04.09.2013. Builder Buyer Agreement (hereinafter referred to as BBA) was executed between parties on 26.09.2013. As per BBA, delivery of flat was to be

made within 30 months from the date of agreement, thus deemed date of delivery was on 26.03.2016. Complainants have paid Rs. 49,55,472/- against basic sale consideration of Rs. 49,00,000/-.


Main grouse of the complainant is that respondent has failed to deliver possession of the flat till date even after lapse of approximately nine years from the date of booking and payment of more than hundred percent of basic sale consideration,. As per complainant, construction of flat is still incomplete. Therefore, complainant is seeking refund of Rs. 49,55,471.84/- along with interest as per Rule 15 of the HRERA, Rules 2017.

2. Learned counsel for the respondent stated that construction is going on at full swing and flat of complainant would be delivered to the complainant after completion as and when Occupation Certificate is received from the department concerned. On a query put by the Authority that whether respondent has obtained Occupation Certificate qua complainant's flat and the project, learned counsel for respondent stated that as per his instructions, respondent has applied for grant of Occupation Certificate but the same has not been received as yet.

3. After hearing arguments of both the parties and perusal of record, Authority observes that booking of flat was made in April, 2013 and despite lapse of approximately nine years of booking, respondent has failed to handover delivery of flat to the complainant. Respondent has failed to specify a definite date by which he will be able to handover delivery of the flat to the complainant.

Moreover, the status of Occupation Certificate is unknown. Mere verbal statements have been made by learned counsel for respondent that respondent company has applied for grant of Occupation Certificate without any supporting document to prove it.

In these circumstances, it is inferred that at present respondent is unable to give a proper and lawful offer of possession to the complainant as he has not yet received Occupation Certificate from the concerned department. Already an extraordinary delay has been caused by respondent to complete and deliver the flat to the complainant which amounts to breach of terms of the BBA. No offer for delivery of possession of flat has been made yet. Further, delivery of possession of flat along with Occupation Certificate does not seem possible in foreseeable future. Moreover, respondent has been using the amount deposited by complainant for the last nine years without any reasonable justification. When such inordinate delay has already been caused, it is to be presumed that the purpose of booking the flat has got defeated. In such, circumstances, the option will be of the allottee-complainant to continue with the project or withdraw from it. Therefore, due to huge delay in offer of possession, the purpose of booking present flat by complainant has been defeated. Thus, failure of respondent to deliver possession of flat even after a huge delay of about nine years from date of booking in the year 2013 has frustrated the very purpose of booking the flat. Thus, an inordinate delay has already been caused in handover of possession of the flat. Complainant cannot be compelled to continue with the booking of flat and wait

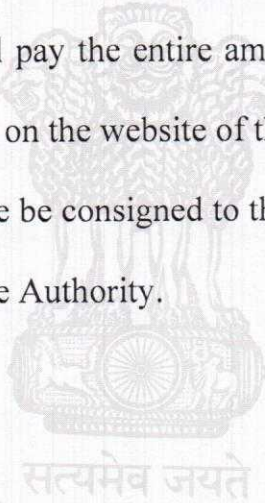


for an indefinite period of time to get its possession. Therefore, Authority finds it to be a fit case for allowing refund of the amount paid by the complainant and directs the respondent to refund Rs. 49,55,471.84/- paid by the complainant along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017 from the date of making payments up to the date of passing of this order.

4. As per calculations made by Accounts Branch, amount payable by the respondent to the complainant along with interest has been worked out to Rs. 88,25,415.84/- (Rs. 49,55,472.84/- + Rs. 38,69,943/-). Therefore, Authority directs the respondent to refund Rs. **88,25,415.84/-** to the complainant.

5. Respondent shall pay the entire amount to the complainant within 90 days of uploading of order on the website of the Authority.

Disposed of accordingly. 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]