



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 549 OF 2020

Sanjeev Kumar

....COMPLAINANT

VERSUS

TDI Infrastructure Pvt. Ltd.

....RESPONDENT

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 10.08.2022

Hearing: 6th

Present: - Mr. Ashish Chaudhary, Counsel for the complainants through VC.
Mr. Shubhnit Hans, Ld. Counsel for the respondent.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. Initiating his arguments, learned counsel for the complainant stated that complainant had booked a unit in the project named "Tuscan Floors" of the respondent situated at Sonipat on 20.01.2011. At first a Flat No. T-180/GF was allotted to him vide Allotment letter dated 17.12.2013. Thereafter respondent unilaterally changed his allotted unit to T-159/GF vide second allotment letter dated 24.03.2014. Respondent again changed the unit allotted to him without seeking his consent. Vide third allotment letter dated 17.11.2014, respondent finally allotted to the complainant Unit No. T-42/GF

measuring 1164 sq. fts. was. Floor Buyer Agreement (hereinafter referred to as FBA) was executed between parties on 24.11.2014. As per FBA, delivery of the flat was to be made within 30 months from the date of agreement, thus deemed date of delivery was on 24.05.2017. Complainant has paid Rs. 20,26,194/- against basic sale consideration of Rs. 26,20,378/-.

Learned counsel for the complainant has also apprised the Court that unit is incomplete and presently its construction is at standstill. complainant cannot be compelled to wait further for indefinite period of time to get possession of his allotted unit as respondent has failed to perform his contractual obligation to deliver possession of unit to the complainant. Therefore, complainant is seeking refund of Rs. 20,26,194/- along with interest as per Rule 15 of the HRERA, Rules 2017.

2. Learned counsel for the respondent has admitted that construction of the tower as well as unit of the complainant could not be completed due to some unavoidable reasons. Therefore, they are unable to deliver possession of originally allotted unit to the complainant. Learned counsel for the respondent stated that respondent company is willing to allot alternate unit to the complainant. Learned counsel for the respondent while admitting the payments made by the complainant stated that respondent had applied for grant of Occupation Certificate on 09.05.2014 but same has not been granted by The Department of Town & Country Planning.

3. After hearing arguments of both parties and perusal of record, Authority observes that admittedly respondent is unable to complete the construction of the tower in which unit of complainant is located. Besides, respondent is not able to deliver possession of originally allotted unit to the complainant due to certain reasons not disclosed by respondent. Therefore, respondent is not in a position to deliver unit originally allotted to the complainant.

In such circumstances, complainant can either opt to take possession of another similarly situated alternate unit of his choice or withdraw from the project by taking refund of the amount paid by him along with permissible interest.

Learned counsel for the complainant has stated that complainant does not want to relocate to alternate unit. Therefore, respondent is duty bound to deliver originally allotted unit to the complainant. An alternate unit can be offered only with written consent of the allottee. Authority cannot force an allottee to accept alternate unit when originally booked unit cannot be delivered. In such circumstances, if allottee seeks refund, the same must be granted.

Authority finds it to be a fit case for allowing refund of the amount paid by the complainant as respondent is not able to deliver originally allotted plot to the complainant and he has been using the amount deposited by



complainant for the last eleven years without any reasonable justification. Therefore, the and directs the respondent to refund Rs. 20,26,194/- 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. 37,17,149/- (Rs. 20,26,194/- + Rs. 16,90,955/-). Therefore, Authority directs the respondent to refund **Rs. 37,17,149/-** to the complainant.

5. Respondent shall pay the 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.

सत्यमेव जयते



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]