



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1490 OF 2020

Sunil Kumar Sinha

....COMPLAINANT

VERSUS

TDI Infracorp (India) Ltd.

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 04.08.2022

Hearing: 15th

Present: - Mr. Sanjeev Kumar Mishra, Ld. counsel for the complainant through VC.

Mr. Aditya Pratap Singh, Ld. Counsel for respondent through VC.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. Initiating his arguments, learned counsel for the complainant stated that complainant booked a floor in the project of respondent namely "Lakeside Height" in TDI Lake Grove City, Kundli, Sonapat by depositing initial amount of Rs. 4,50,000/- in July, 2013. Customer ID KLH/00024/13-14 was created in favour of complainant. No booking receipt was issued in his favour by respondent. He paid Rs. 2,32,000/- on 21.12.2013. He also paid Rs. 5,00,000/- by cash. Respondent has not issued any allotment letter in his favour. Complainant visited the site in the year 2013. He was shocked to see that no construction had started at site and was overrun with wild grass. Respondent also failed to discharge his duty to execute Builder Buyer Agreement till date. Feeling cheated, he asked company to refund his money but officials of respondent convinced him to continue with allotment.

On 06.12.2018, respondent sent a notice for clearing outstanding payments within 15 days or else his booking will be cancelled and amount paid by him will be forfeited. Complainant requested officials of respondent company to refund of amount deposited by him. But respondent did not refund the amount paid by complainant. Instead, respondent unilaterally cancelled his booking vide letter dated 18.03.2019 and forfeited the whole amount deposited by him i.e. Rs. 11,83,206/- as earnest money. Since, respondent has



failed to allot any flat; execute Builder Buyer Agreement; and cancelled booking of flat without returning the amount paid by him, therefore, complainant, is seeking refund of Rs. 11,83,206/- along with interest as per Rule 15 of the HRERA, Rules 2017. Complainant has filed written submissions on 17.08.2022, same are taken on record.

2. In rebuttal, learned counsel for the respondent has stated that respondent company had issued various letters to complainant requesting him to pay outstanding amounts but complainant did not make any payments after 28.12.2013. Respondent has annexed 21 such reminder letters starting from Oct, 2013 till Dec, 2018. He also stated that even allotment of flat could not be done due to default in payment of installments by the complainant. Due to repeated default in payment of installments by complainant, booking of complainant was cancelled vide letter dated 18.03.2019 and amount paid by complainant i.e. Rs. 11,73,164/- was forfeited as earnest money.

3. After hearing both parties and perusal of records of the case, Authority observes that respondent has failed to allot any specific flat in favor of the complainant till date. He has also failed to execute Builder Buyer Agreement with complainant. As per statement of accounts issued by the respondent on 24.07.2013, complainant had paid last installment in Dec, 2013. Reminder letters annexed by the respondent to pay installments are not proved on record as they are not supported by any postal/ courier receipt. Thus,

respondent has failed to prove that any demand was raised by him after receipt of amount in Dec,2013. Further, respondent had cancelled booking of flat of the complainant vide letter dated 18.03.2019 without returning amount paid by him.

In such circumstances, Authority observes that said cancellation of allotment of flat of complainant without allotment of specific flat to the complainant; without executing agreement was illegal; and without returning amount paid by the complainant is unfair and arbitrary. Respondent is using said amount deposited by the complainant for the last five years without any reasonable justification. This is a case of continuing contract as till date respondent have not returned the amount paid by the complainant. Respondent has clearly failed to discharge his lawful obligations. In such circumstances, deduction of whole amount paid by complainant against earnest money is also unjust and illegal.

In view of above, Authority finds it to be a fit case for allowing refund of the amount paid by the complainant and directs the respondent to refund 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. Respondent has admitted payment of Rs. 11,73,164/- vide its statement of accounts annexed with written submissions filed by complainant. Complainant claims that he has paid

Rs. 5,00,000/- by cash on 09.08.2014 to support the same he has attached a record slip showing payment of Rs. 5,00,000/- in favour of Aditya Infracorp Pvt. Ltd. Other two entries showing payment of Rs. 4,50,000/- and Rs. 2,33,206/- are in favour of TDI Infracorp but payment of amount of Rs. 5,00,000/- is shown in favour of Aditya Infracorp Pvt. Ltd. Since, no connection of Aditya Pvt. Infracorp Ltd. with TDI Infracorp has been established by the complainant, therefore, amount paid to Aditya Pvt. Infracorp cannot be said to be as amount paid to TDI Infracorp Ltd. i.e. respondent company. Therefore, Authority decides to take Rs. 11,73,164/- which is the amount admitted by respondent vide statement of accounts dated 24.07.2013 as amount paid by complainant. Therefore, complainant is entitled to refund of Rs. 11,73,164/- along with interest on the amount paid by him from the date of making payments up to the date of passing of this order. Complainant is granted liberty to approach Authority to claim the differential amount on production of proof of payment of the same.

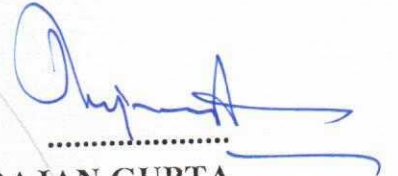
4. As per verification by Accounts Branch, amount payable by the respondent to the complainant along with interest till the date of this order has been worked out to Rs. 21,96,529/- (Rs. 11,73,164/- + Rs. 10,20,365/-) till date. Therefore, Authority directs the respondent to refund Rs. 21,96,529/- to the complainant.



5. The 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]