



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1456 OF 2020

Amarprit Singh

....COMPLAINANT

VERSUS

TDI Infrastructure Pvt. Ltd.

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 29.07.2022

Hearing: 17th

Present: - Mr. Pujit Gumber, Ld. Proxy counsel for the complainant through
VC.

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

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. Learned Proxy counsel for the complainant was seeking adjournment in present case. On perusal of case file, it was observed that the case had already been listed for hearing sixteen times. Therefore, Authority observed that grant of further adjournment would not serve any useful purpose except delay in delivering justice to the complainant, all the more when complainant has been waiting for delivery of possession of plot since his booking in the year 2005. Therefore, present case was disposed of with liberty to file written arguments to both parties. Learned counsel for the complainant filed written arguments on 04.08.2022. No written arguments have been filed by the respondent. So, present case is being disposed of on the basis of available facts and record of the case including complaint, written arguments filed by learned counsel for the complainant; and reply as well as oral submissions made by learned counsel for the respondent.

2. On perusal of record, it is observed that complainant has stated in his complaint that he booked a plot in the project named 'TDI CITY', of the respondent at Sonapat on 15.10.2005. Plot no. J-595 measuring 350 sq. yds. was allotted to him. He paid Rs. 9,35,375/- till 01.03.2006 against total sale consideration Rs. 28,87,500/-. Last demand raised by the respondent was on 10.02.2006. Despite payment of installments as per demand raised by the

respondent, no Builder Buyer Agreement (herein after to be referred as BBA) was executed by the respondent. No deemed date of delivery was given by the respondent. As per agreements made by the respondent with allottees of similarly situated allottees, plot should have been handed over to complainant by Dec,2008. Complainant visited plot site, considering three years as sufficient time for development of plot but was shocked to see that there was no development at all and no basic infrastructure was laid down there. Aggrieved by non-development at site, complainant served legal notices in the year 2016 and again in the year 2020 but no response has been received from respondent till date.

Main grouse of the complainant is that respondent has failed to handover possession to him even after lapse of about sixteen years from the deemed date of delivery. No BBA has been executed and there is no development at site. Therefore, complainant has sought refund of Rs. 9,35,375/- along with interest as per Rule 15 of the HRERA, Rules 2017 on account of multiple defaults by the respondent,.

3. In written submissions filed by leaned counsel for the complainant, complainant has denied receipt of cancellation letter dated 01.11.2007. Complainant has also denied receipt of any demand letter after 10.02.2006. Complainant was willing to pay further installments but he did not receive any demand letter from the respondent. Learned counsel for the complainant has further stated that respondent has failed to discharge his duty to execute BBA

even after receipt of about 30% of the basic sale consideration till the year 2006. Complainant has further alleged that respondent has failed to obtain Completion Certificate qua his plot and complainant's plot is not covered under Part Completion Certificates dated 23.01.2008, 18.11.2013 and 22.09.2017. Therefore, complainant has sought refund of amount deposited by the complainant along with permissible interest as respondent has been using the amount deposited by the complainant for last sixteen years without any reasonable justification.

4. Respondent in his reply has admitted payment made by the complainant and further stated that the project has been developed and Part Completion Certificates have been granted by the Department of Town & Country Planning, Haryana on 23.01.2008, 18.11.2013 and 22.09.2017. He further submitted that allotment of plot of the complainant was cancelled vide letter dated 01.11.2007 on account of non-payment of dues. He also stated that respondent company also issued a letter dated 13.09.2017 requesting complainant to handover original allotment letter and take refund as per policy in view of cancellation of allotment of his plot on 01.11.2007. Besides, they had also published a Public Notice dated 10.05.2018 in newspaper whereby complainant was once again informed regarding cancellation of his allotment.

5. After hearing written as well as oral arguments advanced by both parties and keeping in consideration record of the case, Authority observes that



complainant has admitted receipt demands from the respondent till 10.02.2006 against which he had paid Rs. 9,35,375/-. No document has been placed on record by respondent showing any demand raised by respondent for payment of installments after Feb, 2006. Thus, respondent has failed to prove that any demand was ever raised by him after Feb,2006. Therefore, default in payment of installments cannot be attributed to the complainant since respondent himself failed to raise any demand after 10.02.2006.

Complainant has also denied receipt of cancellation letter dated 01.11.2007 as well as letter dated 13.09.2017 issued by respondent. On perusal of record it is observed that no proof of delivery like postal receipts etc. of letters dated 01.11.2007 and 13.09.2017 have been placed on record by the respondent. Therefore, cancellation letter dated 01.11.2007 cannot be said legal as it was done without following proper procedure. Even no notice qua said cancellation was given to the complainant. In absence of proof of delivery, knowledge of cancellation of plot vide letter dated 01.11.2007 and subsequent letter dated 13.09.2017 has not been established by respondent.

Even, the Public Notice dated 10.05.2018 published by the respondent is a general notice informing public at large that respondent company is not be liable in case any person deals with customers whose provisional allotment was cancelled by respondent company. Said Public Notice cannot be deemed to be due cancellation notice to the complainant as it was issued after


eleven years of alleged cancellation in Nov, 2011 and that too without actually returning the amount paid by complainant. In view of these facts, Authority observes that cancellation of allotment of plot of complainant is not proved by respondent in absence of proof of any demand letter and due cancellation.

Moreover, respondent has been using the amount deposited by the complainant for the last sixteen years without any reasonable justification, 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. Therefore, complainant is entitled to refund of Rs. 9,35,375/- along with interest on the amount paid by him from the date of making payments up to the date of passing of this order.

6. In Complaint No. 1456-2020, 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. 24,63,689/- (Rs. 9,35,375/- + Rs. 15,28,314/-) till date. Therefore, Authority directs the respondent to refund Rs. 24,63,689/- to the complainant.

7. The respondent shall pay entire amount in all cases 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]

