



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 682 OF 2020

Amarjit Kaur Kochhar

....COMPLAINANT(S)

VERSUS

TDI Infracorp (India) Limited.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 02.08.2022

Hearing: 6th

Present: - Mr. Karan Gaba, Ld. Counsel for complainant through VC.


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

ORDER (RAJAN GUPTA-CHAIRMAN)

1 On last date of hearing i.e. 10.05.2022, a detailed order was passed by Authority. Facts of the case and arguments advanced by both parties were recorded therein. Authority vide order dated 10.05.2022 had given its prima facie

opinion that complainant is entitled to get refund of amount paid by her on account of multiple defaults committed by respondent company. Last opportunity was granted to respondent to file their reply. Respondent was also directed to file details of the amount to be paid to the bank under subvention scheme. Relevant part of the order dated 10.05.2022 is reproduced below:

“1. Case of the complainant is that she booked a floor bearing no. WF-90/GF having area of 1500 sq. fts. in the project of respondent namely “Waterside Floors” in TDI Lake Grove City, Kundli, Sonapat by depositing initial amount of Rs. 6,00,000/- on 10.05.2013. Floor Buyer Agreement was executed between parties on 25.07.2014. As per agreement, possession of booked floor was to be handed over within 30 months from the date of agreement, thus deemed date of delivery comes to 25.01.2017. Complainant has paid Rs. 62,84,470.26/- till date against basic sale consideration of Rs. 62,99,999.56/-. Out of total amount paid by complainant, she has raised Rs. 30,93,882/- by way of loan from banks. Initially an amount of Rs. 15,04,882/- was raised by complainant from India Bulls Housing Finance Ltd. (IBHFL) on 19.08.2014. A Memorandum of understanding (herein after referred to as MOU) was executed between complainant and respondent on 25.05.2015. Clause 5 of said MOU stipulated that complainant is entitled to reimbursement of interest component every month between 10th to 15th , by way of cheques, till offer of possession is made by respondent. Loan facility was got transferred by complainant from India Bulls Housing Finance Ltd. to India Infoline Housing Finance ltd. (IIHFL). A tripartite agreement was executed between complainant, respondent and IIHFL in Sept. 2015. Additional



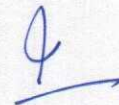
amount of Rs. 16,52,000/- was raised from IIHFL in Nov. 2015. Thus, out of total payment of Rs. 62,84,470/- paid to respondent, complainant has paid Rs. 35,19,588/- out of his own pocket plus Rs.27,64,882/- by way of loan raised from financial institutions.

Grouse of the complainant is that despite lapse of more than five years from deemed date of delivery, respondent has failed to deliver her possession of the floor, therefore, she is seeking refund of Rs. 62,84,470.26/- along with interest as per Rule 15 of the HRERA, Rules 2017. Complainant is also aggrieved on account of the fact of non-payment of interest as per MOU w.e.f. July, 2019. As per her averment respondent had made last payment of interest till June, 2019, thereafter they have been defaulting in respect of their commitment.

2. On last date of hearing, learned counsel for the respondent had sought time to file his reply. Authority had granted last opportunity to file reply. Till date reply has not been filed. Learned Proxy counsel for respondent is seeking more time to file reply.

3. Learned counsel for the complainant is also seeking time to argue the case.

4. Today is fifth hearing of the case. After perusal of record, it is found that Authority vide its order dated 08.03.2022 had directed the respondent to give details of overdue amount to be paid to bank and to give a specific date by which said amount will be paid. No information has been filed by respondent till date. Even, reply has not been filed by respondent till date. Aforesaid information is necessary for disposal of the case.



5. As per statement of accounts attached by complainant, Annexure A-16 on page 60, complainant has deposited total Rs. 62,84,470/- out of which she has paid Rs. 35,19,588/- out of his own pocket and Rs.27,64,882/- by way of raising loan from two banks. Despite lapse of more than five years from deemed date of delivery, respondent has failed to deliver her possession of floor till date. No further commitment is also being made. Such, lapse on part of respondent has lead Authority to form a prima facie view that respondent company has defaulted on multiple accounts which entitles complainant to get refund of amount paid by her along with interest as per Rule 15 of the HRERA, Rules 2017 from the date of making payments up to the date of passing of order on the next date of hearing. On the request of Proxy Counsel for respondent, last opportunity is granted to respondent to file their reply and supply a copy of the same to the complainant within two weeks from today. Respondent shall also file information in compliance of order dated 08.03.2022 with an advance copy to the complainant. No further opportunity will be granted.”

2. Learned counsel for respondent stated that their reply is ready and will be filed the same day. Accordingly, respondent filed his reply on 02.08.2022.

Complainant also filed their written arguments on 12.08.2022.

3. Respondent has stated in his reply that they had offered fit out possession of the unit to the complainant on 21.02.2022. Respondent has admitted receipt of Rs. 63,46,324/- from the complainant which includes the amount paid by complainant out of his own pocket as well as by way of loan from two banks.

4. After hearing arguments of both parties and perusal of record, Authority observes that admittedly after inordinate delay of nine years from the date of booking, respondent had offered fit out possession of the unit to the complainant on 21.02.2022, which is highly delayed. Even now status of Occupation Certificate qua the apartment is unknown. Since respondent has not disclosed status of Occupation Certificate qua the floor of complainant as well as whole of the project, therefore, it is presumed that he has not obtained Occupation Certificate from the department concerned till date. Thus, offer of fit out possession dated 21.02.2022 without receipt of Occupation Certificate cannot be termed a proper and legal offer of possession. Further, when such inordinate delay has already been caused, it is to be presumed that the purpose of booking the floor has got defeated. In such circumstances, all options will be with the allottee-complainant to continue with the project or withdraw from it.

In such circumstances, when status of Occupation Certificate is unknown, complainant cannot be compelled to wait for indefinite period to get possession of the floor. Purpose of buying the floor has got totally frustrated due to inordinate delay. Therefore, Authority finds it to be a fit case for allowing refund Rs. 35,19,588.26/- paid by the complainant out of her own pocket and accordingly, directs the respondent to refund Rs. 35,19,588.26/- 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. As per calculations made 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. 63,26,532.26/- (Rs. 35,19,588.26/- + Rs. 28,06,944/-) till date. Therefore, Authority directs the respondent to refund Rs. 63,26,532.26/- to the complainant. The respondent shall pay entire amount to the complainant within 90 days of uploading this order on the web portal of the Authority.

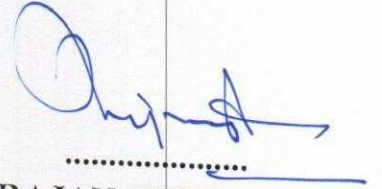
5. Since, respondent has defaulted in making payments of Pre-EMI interest under subvention scheme, therefore, respondent is directed to make payment of Pre-EMI interest and settle the entire loan account with lending banks. Respondent will get a no dues certificate from banks and send to the complainant.

Learned counsel for the complainant has also stated that respondent has been defaulting in making payment of Pre-EMI interest to the lending banks. He further apprised, the Court that respondent has paid Pre-EMI interest to bank only till June, 2019 and thereafter, complainant has been depositing Pre-EMI interest to the bank herself. On perusal of record, it is observed that neither party has placed any documents on record showing the amount paid by complainant to the bank as Pre-EMI interest. In such scenario, complainant is directed to send to the respondent details of Pre-EMI interest paid by her to the bank along with proof of such payments i.e. statement of accounts reflecting the same. Respondent shall return said amount to the complainant. In case, respondent fails to return amount paid by complainant on account of PRE-EMI interest to her, or complainant feels dissatisfied with said payment, she may file a fresh complaint

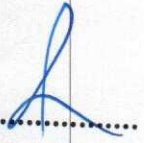


qua the same issue. Liberty is granted to the complainant to approach this Court for ensuing return of PRE-EMI interest paid by him.

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]

