



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 3019 OF 2019

Anupama Gupta

....COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 17.05.2022

Hearing: 5th

Present: - Mr. Chaitanaya Singhal, Ld. Counsel for complainant through VC.

Mr. Shubhnit Hans, Ld. Counsel for respondent through VC.

Mr. Ishawar Singh, Ld. Counsel for the respondent.

ORDER (RAJAN GUPTA-CHIARMAN)

1. On the last hearing dated 24.03.2022, Authority had observed that since admittedly, respondent has been using the amount deposited by complainant i.e. Rs. 9,00,000/- for the last sixteen years without any reasonable justification, therefore, respondent is prima face liable to refund the amount deposited by the complainant along with permissible interest as per Rule 15 of the HRERA, Rules 2017 from the date of making payments up to the date of passing of the order on the next date of hearing. Both parties were directed to file evidence in support of their respective arguments. Today neither of party has filed any document in compliance of order dated 24.03.2022. Relevant part of aforementioned order dated 24.03.2022 is reproduced below:

“4. Facts of the case of the complainant is that complainant had booked a flat in the project named “Kingsbury-TDI City” of the respondent situated at Sonipat on 21.02.2006. As per Registration Form allotment of flat was to be made within 9 months of booking/registration. No allotment was made in favour of complainant. No Builder Buyer Agreement (hereinafter referred to as BBA) was executed between parties. Complainant has paid Rs. 9,00,000/- till date against basic sale consideration of Rs. 18,31,500/-.

On 30.07.2016 complainant visited office of respondent and submitted letter seeking allotment of booked flat.



Receipt of said letter was acknowledged by official of respondent company but respondent company neither allotted flat in her favour nor sent any reply to aforesaid letter. Later during another visit to respondent's office on 27.12.2019, she was informed that her booking was cancelled on account of non-payment of installments. Learned counsel for the complainant further apprised the Authority that construction of Kingsbury flats is complete and respondent has delivered possession of flats to other allottees in same project but her booking was cancelled without any intimation to her. Cancellation of booked flat by respondent without any intimation to the complainant and without return of amount deposited by her was illegal and arbitrary.

Learned counsel for the complainant also stated that initial booking amount deposited by complainant was promised to be adjusted against other flat by respondent, considering his assurance, he further deposited an amount of Rs. 6.00 lakhs as being reflected on Page 22 and 23 of Annexure P-2.

Even after lapse of sixteen years of booking, respondent has failed to deliver booked unit to the complainant. Therefore on account of multiple defaults of the respondent, complainant is seeking refund of Rs. 9,00,000/- along with interest as per Rule 15 of the HRERA, Rules 2017.

2. On the other hand, learned counsel for the respondent pleaded that respondent Company has already received Occupation certificate in respect of the said project on 21.04.2010, 01.06.2010, 25.05.2012. He further stated that respondent had offered provisional allotment to the complainant vide letter dated 03.03.2007. Complainant neither replied to said



provisional allotment letter nor paid any further installments, therefore, booking of her flat was cancelled vide Cancellation letter dated 05.06.2008. Proof of service of said Cancellation letter has been attached as Annexure-R-3(Colly). As per company policy 50% of booking amount of Rs. 3,00,000/- was deducted and a cheque of Rs. 1,50,000/- was also sent to the complainant along with said cancellation letter. Vide said letter, Complainant was requested to surrender original receipts but no communication was received from her. Therefore, complainant cannot seek refund of amount deposited by her after lapse of fourteen years from date of cancellation of her booking. So, present complaint may be dismissed as it is barred by lapse of time and since no cause of action survives as respondent company had duly cancelled booking of the complainant.

He further stated that oral averments made by learned counsel for the complainant regarding adjustment of amount paid by complainant towards another unit is baseless. Complainant has not made any such averment in her complaint. Annexure-2 which is ledger issued by respondent does not in any way support averments of learned counsel of the complainant. Further, complainant has not attached any other document supporting her claim. Therefore, alleged change of booking and adjustment of amount is a concocted story.

3. At this stage, Authority asked complainant what steps were taken by the complainant to get delivery of her flat after its booking in the year 2006. Learned counsel for the complainant sought an adjournment to seek instructions from complainant and file documents, if any, in this regard.



4. After hearing arguments of both the parties and perusal of record, Authority observes that admittedly respondent had received Rs. 9,00,000/- from the complainant on 21.02.2006. Complainant has denied issuance of any allotment letter. Though learned counsel for respondent has claimed that respondent has cancelled booking of flat vide Cancellation letter dated 05.06.2008 and refunded 50% of booking amount of Rs. 3,00,000/- as per company policy and a cheque of Rs. 1,50,000/- was also sent to the complainant along with said cancellation letter. Proof of service of said Cancellation letter has been attached as Annexure-R-3(Colly). Learned counsel for the complainant has denied receipt of said cancellation letter. As per his version, complainant came to know about cancellation of booking on 27.12.2019, when she visited respondent's office.

Authority considers that even if respondent's version regarding cancellation of booking of flat in June, 2008, is taken as correct, admittedly, he has been using the amount deposited by complainant i.e. Rs. 9,00,000/- for the last sixteen years without any reasonable justification. In such circumstances, respondent is prima face liable to refund the amount deposited by the complainant after deduction of earnest money along with permissible interest as per Rule 15 of the HRERA, Rules 2017 from the date of making payments up to the date of passing of the order on the next date of hearing.

5. Since counsels of both parties are giving conflicting statements regarding issuance and receipt of allotment and cancellation letter. Both parties are directed to file evidence in support of their arguments with an advance copy to each other."



2. Learned counsel for complainant has drawn attention of the Court to ledger accounts annexed by him at Annexure P-2, reflecting initial booking amount of Rs. 3 lakhs deposited by complainant on 21.02.2006 qua unit no. TM -12372 as entry no.1. Learned counsel for the complainant stated that complainant surrendered her two other units which she had booked with respondent company. An amount of Rs. 6.00 lakhs from other two units was adjusted by respondent towards present unit on 21.02.2006 and 22.02.2006 as being reflected on Page 22 and 23 of Annexure P-2. Thus, complainant had paid total of Rs. 9.00 lakhs to respondent for the present unit. At the time of adjustment of amount, respondent assured immediate allotment of a unit to the complainant, but till date respondent has failed to allot her any unit. Instead, when complainant visited the site on 27.12.2019, she was informed by office staff of respondent that her booking was cancelled on 05.06.2008. Since respondent not only failed to allot unit to complainant despite lapse of about sixteen years of booking but instead unilaterally cancelled booking of the complainant, thus, respondent has failed on multiple counts. Further, respondent has been using the amount deposited by the complainants since the year 2006 till date without any reasonable justification, therefore, complainant is seeking refund of Rs. 9.00 lakhs deposited by her along with interest.

3. In response, learned counsel reiterated pleadings made by him on 24.03.2022 that the complaint is time barred and that respondent had cancelled



booking on 05.06.2008 along with a cheque of Rs. 1,50,000/-, therefore, complaint is liable to be dismissed.

4. After perusal of the record and hearing arguments of both parties, Authority observes that admittedly, respondent received payment of Rs. 9.00 lakhs from complainant on 21.02.2006 towards booking of unit. Respondent has failed to allot unit to complainant till date. Argument given by learned counsel that the complaint is time barred stands rejected on the ground that respondent has not discharged his duty to prove that any such demand for payment for instalments was duly raised by him. Respondent has attached a letter dated 03.03.2007 as Annexure- R-5 with his reply seeking installment but same is not accompanied with any proof of its due delivery to the complainant. The burden of proof that booking of unit was cancelled after giving due notice to complainant was on respondent but no postal receipt reflecting its due delivery to complainant has been placed on record along with letter dated 03.03.2007. otherwise also after receipt of RS. 9.00 lakhs from the complainant, respondent should have made proper efforts to communicate with complainant for paying due amounts etc. Further, claimed return of Rs. 1,50,000/- was not received by complainant because it appears to have been sent at a wrong address. Respondents, therefore, neither returned the money nor made efforts to contact complainant for further action. After receipt of Rs. 9.00 lakhs respondents ought to have made efforts to get the builder buyer agreement executed, but they failed to do so.

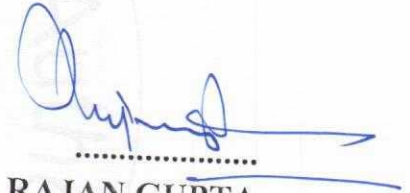


The plea of the respondent that they had sent a cheque of Rs. 1,50,000/- in favor of complainant (after deduction of fifty percent of booking amount) along with cancellation letter, is also rejected because even said letter and cheque was also not duly delivered to the complainant as it was sent at a wrong address. The postal/courier receipts attached by respondent along with reply at Annexure R-3 (Colly) at page 20 and 21 show that Cancellation letter along with cheque was sent to KFL -13053/CL-KFL-5 i.e. address of booked unit and not to the postal address of the complainant. As per Annexure P-2 at page 21 of the complaint, postal address given by complainant to the respondent was B-108, Pujari Society, Shiv Vihar Society, Rohtak Road, New-Delhi-87. Therefore, cancellation letter and the cheque cannot be deemed to duly delivered by respondent. Thus, in the absence of duly delivery cancellation letter by respondent, is held to be void. Therefore, said letter of cancellation dated 05.06.2008 stands quashed. The very fact that despite payment of Rs. 9.00 lakhs by complainant respondent failed to issue allotment letter to complainant, entitles complainant to seek refund of amount deposited by her along with interest. Moreover, respondent has been using Rs. 9.00 lakhs deposited by complainant till date without any justifiable reason. Therefore, complainant is entitled to interest on the amount paid by her from respective date of payments till realization of the same.



5. As per calculations made by Accounts Branch, amount payable by the respondent to the complainant along with interest has been worked out to Rs. 22,74,383/- (Rs. 9,00,000/- + Rs. 13,74,383/-) till date. Therefore, Authority directs the respondent to refund Rs. 22,74,383/-.

6. 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.



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH SIHAG
[MEMBER]