



Complaint No. 339 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 339 OF 2019

Mr. Ram Pal Tandon

....COMPLAINANT

VERSUS

M/S TDI Infratech Ltd.

....RESPONDENT

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 23.04.2019

Hearing: 2nd

Present: - Mr. Satish Mishra, Counsel for complainant

Mr. Shobit Phutela & Shubhnit Hans, Counsels for respondent

ORDER (RAJAN GUPTA- CHAIRMAN)

1. This is second hearing of the matter. On the first hearing it was adjourned because respondent had not filed his reply. Now, the pleadings are complete, therefore, after hearing both the parties, this matter is finally disposed of today.

2. The case of the complainant is that he booked a shop measuring 549.88 sq. ft., in the project "Park Street- Commercial Plaza" of the respondent in Kamaspur, Sonipat vide Registration Form dated 27.11.2013. He paid Rs.3,00,000/- as booking amount on 08.01.2014. Commercial Shop No. GF-111, measuring 549.88sq. ft. was allotted to them on 29.01.2014. Thereafter, he kept paying installments towards the cost of the shop as per demands of the respondents till 04.02.2015.

The complainant states that he had booked the shop in order to settle his son. He states that the respondent had promised delivery of possession of the shop within two years from the date of booking but the construction work in the project was slow due to which the possession of the shop has not been offered till date. The complainant has paid Rs.13,02,561/- till date against the sale price of Rs.25,86,636/-.

The complainant has been making repeated requests through mails to the respondent to either refund or offer him possession of a ready to move in

alternate shop but the respondent has failed to do the needful till date. In an email dated 02.01.2019, the complainant mentioned that due to prolonged delay in offering possession of the shop, his son had left India in search of other job avenues. He requested the respondent to grant refund of the amount already paid by him or in alternate hand over the possession of a ready to move in smaller shop costing upto Rs.15 lakhs because he was unable to make any further payment. The respondent did not reply to this request also made by the complainant.

The complainant is aggrieved due to non-delivery of the shop, therefore, he has filed this complaint, seeking refund of Rs.13,02,561/- along with interest.

3. The respondent has denied all the allegations and has raised several objections as follows:

i) That provisions of Real Estate (Regulation and Development) Act, 2016 are not applicable to the present case because the project was floated and allotment was made in favour of the complainant much prior to coming into force of the Act, hence the provisions of RERA Act /Rules are not binding on the parties.

ii) This Authority does not have jurisdiction to entertain this complaint because this project has not been registered with the Authority. Since it is neither registered nor registerable, the Authority has no jurisdiction

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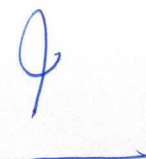
to entertain any complaint in this regard. It is for the reason that the respondent had applied for grant of Occupation Certificate prior to coming into force of the Act, therefore, in terms of the provisions of Rule 2(o) of the HRERA Rules, 2017, this project cannot be categorized as an "On-going Project" therefore not registerable with this Authority.

iii) Another ground for denying jurisdiction of this Authority as claimed by the respondent is that nature of the alleged grievance of the complainant is such that the same could be agitated only before the Adjudicating Officer u/s 71 of the Act.

iv) Respondent states that delivery of possession could not be made due to pendency of the application for grant of Occupation certificate which was submitted to the Director, Town & Country Planning department prior to coming into force of the Act. Even, the application for grant of registration of the project is pending before the Authority. The construction is in full swing and once the occupation certificate is granted possession of the shop will be handed over to the complainant.

v) The respondent has admitted the payments made by the complainant but states the complainant has not yet paid the complete amount.

4. The Authority has considered the written as well as oral pleadings of both the parties. It observes and orders as follows:-



i. Jurisdiction:

First of all the respondent has challenged the jurisdiction of this Authority for the reasons that the project was floated and the allotment was done prior to coming into force of RERA Act. This objection is not sustainable in view of the law laid down by this Authority in **Complaint case No.144- Sanju Jain Vs. TDI Infrastructure Ltd.** The logic and reasoning in that complaint are fully applicable on the facts of this case as well.

ii. Jurisdiction of Adjudicating Officer:

The second plea of the respondent regarding lack of the jurisdiction is that such complaint could be preferred only before the Adjudicating Officer. This objection is also completely devoid of merit. The institution of Adjudicating Officer is meant to determine the un-liquidated damages arising out of non-performance of full or a part of the contract. The core of the contract falls within the jurisdiction of the Authority only to adjudicate upon.

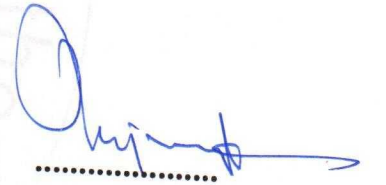
iii. Delay in Offer of possession/ Delivery:

Admittedly, no agreement has been executed between the parties. Evidently, there is no dispute between the parties that till date no offer of delivery of possession qua the shop has been made by the respondent after its allotment in the year 2013, which itself manifest breach of terms of allotment/registration by the respondent. The Authority is of the considered opinion that since the respondent has failed to offer possession of the allotted shop to the complainant, now after lapse of about more than six years from the date of booking it will be unjust, to force the complainant to wait for more time to take the delivery of an alternate shop against his wishes. The respondent has been enjoying usage of the amount deposited by the complainant for the last six years for no evident justification. In these circumstances, when the utility of the shop booked by the complainant has ceased to exist for him, he cannot be compelled to accept an alternate shop against his wishes.

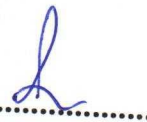
Therefore, the Authority finds it to be a fit case for refund and directs the respondent to refund Rs.13,02,561/- already paid by the complainant along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017.

5. The respondent shall pay the entire amount within 90 days in two instalments of which first instalment will be payable within 45 days and the next within 45 days thereafter. The period of paying such instalments will start from the day the order is uploaded on the website of the Authority.

Disposed of accordingly. The file be consigned to the record room and the orders be uploaded on the website of the Authority.



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH SIHAG
[MEMBER]