



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1455 OF 2021

Gaurav Suri

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 01.06.2022

Hearing: 2nd

Present: - Mr. Tarun Talwar, Ld. Counsel for the complainant through VC.

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

ORDER (RAJAN GUPTA-CHAIRMAN)

1. Case of the complainant is that original allottee had booked a plot in the project named "TDI City" of the respondent situated at Sonepat in May, 2006. Complainant was allotted Plot No. E-303 measuring 350 sq. yds. on 30.06.2006. Complainant has paid Rs. 42,56,242/- against total sale consideration of Rs. 30,61,012/-.

Learned counsel for the complainant stated that Builder Buyer Agreement (BBA) was executed between parties in May, 2006. Since no date for delivery of possession of plot is mentioned in the BBA, therefore, the deemed date of delivery of plot should be taken as three years from execution of BBA i.e. May, 2006, meaning thereby that complainant's plot should have been delivered to him by May, 2009. It is pertinent to mention that complainant has averred in his complaint that a Plot Buyer Agreement was executed between parties in May, 2006 attached as Annexure C-1 but said agreement is a blank copy of agreement. It is unfilled, undated and unsigned. Therefore, same cannot be accepted as a legal agreement executed between parties. In absence of a specific agreement between parties, it is presumed that no Builder Buyer Agreement was executed between parties.

Grouse of the complainant is that despite lapse of about thirteen years from the deemed date of delivery respondent has failed to handover possession of plot to the complainant. Respondent vide letter dated 07.04.2008, offered



possession of plot to complainant, although title of land on which his plot was situated was not clear. Respondent vide its letter dated 16.10.2018 and 28.08.2019 has admitted that original plot is not available due to unforeseen reasons and they are willing to offer an alternative plot to the complainant. Thus, respondent has failed to perform his obligation to deliver possession of the original plot to complainant. Complainant does not wish to take delivery of any alternate plot. Therefore, complainant is seeking refund of Rs. 42,56,242/- along with interest as per Rule 15 of the HRERA, Rules 2017.

2. Learned counsel for respondent stated that though the project has already been developed and Part Completion Certificate has been granted by the Department of Town & Country Planning, Haryana on 23.01.2008, 18.11.2013 and 22.09.2017, however, the plot originally allotted to complainant is not available due to unavoidable circumstances. Respondent vide its letters dated 16.10.2018 and 28.08.2019 had informed the complainant that he was unable to deliver originally allotted plot to him and they are willing to offer an alternate plot to the complainant. Vide said letter respondent had invited complainant to visit his office to choose any alternate plot in the same or other project of the respondent but complainant did not come forward to avail of the options offered to him. Therefore, interest on amount paid by the complainant deserves to be calculated only till 16.10.2018 i.e. the date respondent had invited complainant to choose alternate plot.



3. After hearing arguments of both the parties and perusal of record, Authority observes that admittedly respondent is unable to deliver originally allotted plot to the complainant as per letters dated 16.10.2018 and 28.08.2019. In alternative, respondent has offered the complainant to choose another plot. In such circumstances, complainant could either opt to take possession of another similarly situated alternate plot of his choice or withdraw from the project by taking refund of the amount paid by him along with interest. Relief of possession of particular allotted plot is not possible to be granted to complainant as respondent is not in a position to deliver originally allotted plot to the complainant.

Complainant does not want to relocate to alternate plot. Alternate plot can be offered only with express consent of the allottee. Authority cannot force an allottee to accept alternate plot when originally booked plot cannot be delivered. In such circumstances, if allottee seeks refund, the same must be granted.

In these circumstances, when respondent is not able to deliver originally allotted plot to the complainant and he has been using the amount deposited by complainant for the last seventeen years without any reasonable justification, the 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



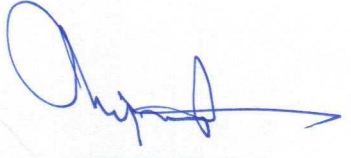
HRERA Rules, 2017 from the date of making payments up to the date of passing of this order. Letter sent by respondent inviting complainant to choose alternative plot implies that respondent has failed to deliver originally allotted plot to the complainant as promised by him. Moreover, it does not obliterate the fact that respondent had received substantial amount from the complainant and had been using it till date without any justifiable reason. Therefore, complainant is entitled to interest on the amount paid by him from the date of making payments till realization of the same.

4. After perusal of record, Authority observes that although complainant has sought refund of Rs. 42,56,242/- but as per receipts sent by him vide email dated 12.06.2022, he has attached receipts of Rs. 39,49,993/-. Respondent vide Annexure R-7 on page 22 of his reply has admitted receipt of Rs. 40,27,843/- from the complainant. Therefore, in absence of receipts for remaining amount, the amount admitted by respondent vide Annexure -7 i.e. Rs. 40,27,843/- is taken as amount paid by complainant to respondent. Therefore, respondent is directed to refund of Rs. 40,27,843/- paid by complainant along with interest. 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. 97,40,311/- (Rs. 40,27,843/- + Rs. 57,12,468/-) till date. Therefore, Authority directs the respondent to refund Rs. 97,40,311/-. The

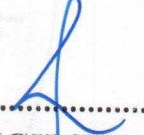


respondent shall pay entire amount to the complainant within 90 days of uploading this order on the web portal of the Authority.

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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RAJANGUPTA
[CHAIRMAN]


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DILBAG SINGH SIHAG
[MEMBER]