



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1284 OF 2021

Anil Dhamija

....COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 28.06.2022

Hearing: 7th

Present: - Mr. Padam Kant Dwivedi, Counsel for the complainant.
Mr. Shubhnit Hans, Ld. Counsel for respondent.

ORDER (RAJAN GUPTA-CHAIRMAN)

1. Case of the complainant is that Original allottee booked a plot in the project named "TDI City" of the respondent situated at Sonipat in the year 2005. Plot No. L-14, measuring 500 sq. yds. was allotted to original allottee

on 13.03.2008. Builder Buyer Agreement (hereinafter referred to as BBA) was executed between parties on 05.06.2008. Said agreement was endorsed in favour of complainant on 28.07.2011. Complainant has paid Rs. 37,68,750/- against basic sale consideration of Rs.29,37,500/-. No date of delivery of possession was mentioned in the BBA. In certain similar cases respondent had assured the allottees to deliver possession of plots within three years from the date of making substantial payments by the complainant. In this case after taking entire consideration amount, delivery of possession deserved to be given within reasonable period of time which in such cases is three years. Thus, learned counsel for complainant pleaded that even in the present case since no date of delivery of possession has been mentioned by the respondent, therefore, the deemed date of delivery of plot should be taken as three years from date of making substantial payments which was 31.07.2009, meaning thereby that complainant's plot should have been delivered to him by 31.07.2012.

Grouse of the complainant is that despite lapse of about ten years from the deemed date of delivery, respondent has failed to deliver possession of plot to the complainant. Further, respondent vide its letter dated 22.05.2019 has admitted that original plot is not available due to unavoidable reasons, and they are willing to offer an alternate plot. Thus, respondent has failed to perform his contractual obligation to deliver possession of booked plot to



complainant. Complainant does not wish to take delivery of any alternate plot. Therefore, complainant is seeking refund of Rs. 37,68,750/- 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 letter dated 22.05.2019 had informed the complainant that he was unable to deliver the 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. Respondent has admitted payment of Rs. 37,68,750/- by complainant vide statement of accounts dated 20.12.2021 (Annexure R-5).

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 letter dated 22.05.2019. 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 Rs. 37,68,750/- 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



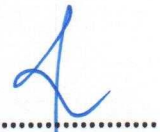
without any justifiable reason. Therefore, complainant is entitled to interest on the amount paid by him from the date of making payments till realization of the same.

4. 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. 90,60,212 /- (Rs. 37,68,750/- + Rs. 52,91,462 /-) till date. Therefore, Authority directs the respondent to refund Rs. 90,60,212 /-.

5. 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]