



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No. – 1009 of 2019

Date of Institution: - 29.04.2019

Date of Decision: - 19.01.2023

Mr. Manoj Suneja s/o Sh. Ramesh Chand Suneja, r/o C/291, Second Floor, Vikas Puri, New Delhi- 110018

...COMPLAINANT

VERSUS

M/s TDI Infrastructure Pvt. Ltd. through Director/Authorized Representative, office at 10, Shaheed Bhagat Singh Marg, Gole Mkt, New Delhi - 110001

....RESPONDENT

Hearing:- 34th

Present:- Mr. Jagan Nath Bhandari Advocate, counsel for the complainant through video conferencing
Mr. Manoj Suneja, Complainant through video conferencing
Mr. Shubhnit Hans Advocate, Counsel for the respondent

Santa Gupta

JUDGEMENT:

The brief facts culminating into the institution of the present complaint are:

1. The complainant had earlier filed complaint bearing no.451 of 2018 before Hon'ble Authority seeking refund of paid amount alongwith interest as the respondent has caused delay of 11 years when the actual offer of possession was made by the respondent and it has been recorded in order dated 20.12.2018 passed by Hon'ble Authority. The respondent had allotted a plot to the complainant in the year 2005. There was inordinate delay of 10 years on the part of respondent for executing Builder Buyer Agreement with the complainant. Despite collecting entire consideration amount including basic sale price, EDC & IDC and taxes in the year 2006, the respondent has failed to honour its commitments. Possession of the plot was offered in the year January 2017, whereas the offer of possession should have been made within a period of 2-3 years. It was observed by Hon'ble Authority that the respondent has no right to demand entire consideration amount 11 years prior to actual offer of possession. It was also observed by Hon'ble Authority that the complainant was entitled to delay compensation as per Rule 15 of RERA Rules. Looking into the conduct of respondent, the Authority itself has denied the benefits of delay compensation as per order in Complaint no.49 of 2018 titled as Prakash Chand Arohi vs Pivotal Infrastructure Pvt. Ltd. Though the relief of refund of paid amount was denied to the complainant as the respondent

had already obtained part completion certificate and offer of possession was made to the complainant but it was also observed that the complainant was entitled to delay compensation. The respondent has also collected delayed payments from the complainant alongwith 18% penal interest in the year 2005-2006. The respondent was directed to charge the penal interest @ 9% and refund or adjust extra @ 9% already paid by the complainant. The Authority also directed the respondent to prepare fresh statement of accounts in line with the findings of Hon'ble Authority, which has not been complied with. The complainant has already preferred execution proceedings before Hon'ble Authority bearing execution Complaint no.1008 of 2019. The complainant had got the unit from the previous owner in the year 2011. A revised statement of account was issued by the respondent on 03.01.2013. Builder Buyer Agreement was executed on 16.10.2015. Despite paying the entire amount of ₹27,83,629/- in the year 2006, the complainant had to wait till 2017 for offer of possession, which is completely unjustified. The respondent has not complied with order dated 20.12.2018 passed by Hon'ble Authority which has caused immense mental pain and damage to the complainant. The complainant has to spend his hard earned money on litigation for executing the orders of Hon'ble Authority. It is settled law that complainant will be awarded cost of litigation in his favour alongwith final order of Hon'ble Authority. Even after paying ₹27,38,629/- in the year 2006 to the respondent, the complainant has to shell out more on litigation just to get justice from Hon'ble Authority. Execution proceedings have added litigation expenses in the final bill.

11 years long delay itself is a torture for any home buyer which brings immense stress, mental pain, frustration, anger, harassment and ill health. The thinking that what would happen to his investment of ₹27,38,629/-, causes trauma to the complainant. The complainant has suffered immense harassment on account of delay and litigation. There is also loss of opportunity to the complainant as the funds paid to the complainant could have been used elsewhere. Complainant has faced immense pressure being business man. The complainant has sought litigation cost to the tune of ₹3,00,000/- in filing three applications before Hon'ble Authority just to get his rights adjudicated. The complainant has also sought compensation of ₹2,00,000/- for mental pain and harassment. 11 years is sufficient long time to wait for justice. He has sought compensation of ₹2,00,000/- for loss of opportunity. If the unit in question would have been delivered to the complainant on time, his socio-economic status would have been totally different. The complainant has also sought compensation of ₹50,000/- for repetitive nature of default.

2. Upon notice, respondent had appeared through counsel and filed reply taking preliminary objections that the respondent company has already received part completion certificate. It is not a matter of dispute that offer of possession has also been made to the complainant on 14.01.2017, it is for these reasons that provisions of RERA Act are not applicable to the present case. Hon'ble Authority did not grant the prayer of refund of amount paid by the complainant vide order dated 20.12.2018 in Complaint no.451 of 2018. The

complaint was disposed of directing complainant to take the possession from the respondent company. Despite this fact, the complainant is filing various complaints before one forum or other for undue monetary gains from the respondent company. It is fundamental principle of law that cause of action cannot be split. The present complaint is not maintainable before this Court as the previously instituted complaint before Hon'ble Authority has already been disposed of. Hon'ble Authority has rightly observed that when the possession was offered, the complainant cannot be allowed to take refund. It was erroneously held by Hon'ble Authority that the complainant shall be entitled to compensation for period of delay. Respondent company has filed an appeal before Hon'ble Appellate Tribunal challenging order dated 20.12.2018 passed by Hon'ble Authority. By way of the present case, the complainant has sought cost of ₹3,00,000/- for filing three complaints: viz Complaint bearing no.451 of 2018, Execution Complaint no.1008 of 2019 and the present Complaint no.1009 of 2019. Respondent cannot be asked to pay for the legal remedies availed by the complainant in order to get his rights adjudicated. Once the decision has been passed by Hon'ble Authority and appeal has been filed by the respondent, the complainant by way of the present case is just filing frivolous litigation in order to twist the arm of respondent company and waste the precious time of Hon'ble Court. This stand taken by the complainant cannot be entertained by this Court to grant any relief to the complainant. The complainant is also seeking compensation to the tune of ₹2,00,000/- for mental pain and harassment.

Sufficient proof has to be brought on record to prove that the complainant has actually suffered mental harassment and pain, but no proof has been attached by the complainant. The complainant cannot file similar complaint before two different forums for the same cause of action. Once the matter has been filed, adjudicated upon qua one cause of action and appeal in respect of which is pending, the complainant cannot approach another forum seeking relief regarding same cause of action. The present complaint is not maintainable till the time the earlier complaint is withdrawn or appeal filed by the respondent company is not decided. The RERA Act came into operation in the year 2016 and by that time the project was completed, completion certificate has been received and possession has been offered. The Act is not retrospective in nature and the Act does not apply to projects that have already been completed. In Complaint no.451 of 2018, the complainant had sought refund of ₹27,83,629/-, damages on account of mental agony, torture and harassment to the tune of ₹10,00,000/- and compensation for deficiency in service to the tune of ₹10,00,000/- and ₹1,00,000/- by way of legal cost. Once the complainant has sought relief regarding compensation from Hon'ble Authority, it cannot seek compensation from this Court. The same is illegal, unjust and no provision of law allows the same. The present complaint is barred by limitation.

3. In para wise reply, it has been submitted that the respondent had collected delayed payments from complainant @ 18% penal interest in the year 2005-2006, which Hon'ble Authority has held unconscionable. The complainant

is just reiterating the issue raised before Hon'ble Authority. All the submissions raised in preliminary objections have also been reiterated. With regard to cost of litigation, it is submitted that the respondent company has also incurred expenses of frivolous litigation initiated by the complainant. The respondent company has not made any violation of the Act or the Rules made thereunder. The respondent has prayed for dismissal of the complaint.

4. Arguments of both learned counsel for the parties have been carefully heard along with meticulous examination of the records of the case.

5. By way of the present complaint, the complainant has sought compensation of ₹2,00,000/- for mental pain and harassment, ₹2,00,000/- for loss of opportunity, ₹50,000/- for repetitive nature of default and ₹3,00,000/- by way of litigation cost. It is the averment of complainant that he has deposited ₹27,83,629/- in the year 2006 which is including the basic price of the plot, EDC & IDC. Though in para no.9 of the complaint, it has been written by the complainant that revised statement of account was issued on 03.01.2013, yet copy of said statement of account has not been placed on record by the complainant. It has further been mentioned that Plot Buyer Agreement was executed on 16.10.2015, copy of which has been placed on record by learned counsel for respondent, in which it has been mentioned that the complainant had submitted application for allotment of residential plot in TDI City, Kundli, Sonapat on 31.08.2005 and Plot no.819, Block-L, measuring 250 sq. yards was made on 10.12.2005. It is the argument of learned counsel for the complainant that despite

taking whole of the amount including EDC & IDC in the year 2006, offer of possession was made on 14.01.2017 after a long period of 11 years, whereas the possession was required to be handed over to the complainant at the most 3 years after allotment. It has been admitted by the complainant that he had filed Complaint no.451 of 2018 for refund of amount paid by him alongwith interest. Vide order dated 20.12.2018 passed by Hon'ble Authority, the complainant was denied relief of refund of money on the ground that respondent has developed the colony and has also obtained part completion certificate. Offer of possession was also made to the complainant. It has further been observed that when the possession is offered, the complainant cannot be allowed refund but he shall be entitled to compensation for the period of delay. In the same order Hon'ble Authority also directed the respondent to prepare fresh statement of account clearly stating therein the amounts to be paid by the complainant to the respondent in accordance with principles laid down in the order and also the amount to be paid by the respondent to the complainant by way of compensation for delayed offer of possession. It has also been observed that the accounts between the complainant and the respondent shall be settled in accordance with aforesaid principles laid down in the order.

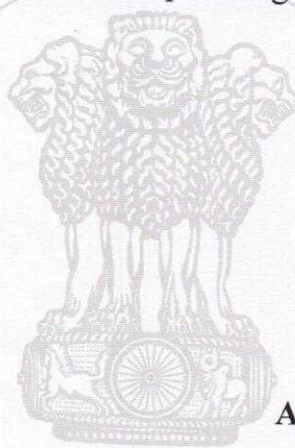
6. It has been argued by learned counsel for respondent that the complainant has already claimed compensation before Hon'ble Authority in Complaint no.451 of 2018 and now he cannot file separate complaint seeking the same relief of compensation. Perusal of order dated 20.12.2018 passed by

Hon'ble Authority, vide observation in para 5(iii), it has specifically been observed that when the possession is offered, complainant cannot be allowed refund but he shall be entitled to compensation for the period of delay. Similarly in para 5(v), the respondent was directed to prepare a fresh statement of accounts clearly stating therein the amounts to be paid by the complainant to the respondent in accordance with the principles laid down above and also the amount to be paid by the respondent to the complainant by way of compensation for delayed offer of possession. After that, it has been specifically observed that the accounts between the complainant and the respondent shall be settled in accordance with the principles laid down in the order. It is apparent on the record that after passing of order dated 20.12.2018 by Hon'ble Authority, fresh statement of account has not been prepared by the respondent to which learned counsel for the respondent has submitted that since appeal was filed before Hon'ble Appellate Tribunal, fresh statement of account was not submitted. It is matter of record that appeal has not been decided yet. If the relief of compensation has been allowed by Hon'ble Authority, for obvious reasons fresh complaint seeking compensation on the same ground was not required to be filed. It is pertinent to mention here that Complaint no.451 of 2018 was filed by complainant on 24.08.2018, which was decided on 20.12.2018. The present complaint has been filed on 29.04.2019. It is observed that the relief of compensation, which has already been entertained and awarded by Hon'ble Authority, cannot be granted by this Court. It is settled principle of law that for one relief, the complainant cannot seek remedy before

two Forums. It is not the case that only relief of interest on delayed possession has been awarded by Hon'ble Authority rather relief of compensation for delayed offer of possession has also been awarded by Hon'ble Authority. As already observed, the complainant cannot file complaint at two Forums for the same relief. The relief of compensation has already been granted to the complainant by Hon'ble Authority. Hence, it cannot be said to be maintainable before this Court.

7. There is no merit in the arguments of learned counsel for complainant and the complaint is ordered to be **dismissed** being not maintainable. File be consigned to record room after uploading of this order on the website of the Authority.

19.01.2023



Sarita Gupta
.....
(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This judgement contains 10 pages and all the pages have been checked and signed by me.

Sarita Gupta
.....
(DR. SARITA GUPTA)
ADJUDICATING OFFICER