HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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BEFORE THE ADJUDICATING OFFICER

Complaint No. – 3318 of 2022
Date of Institution: - 19.12.2022
Date of Decision: - 02.05.2023

Parvesh Jain s/o Sh. Trilok Chand Jain, r/o 571-572, Pocket A-1, Sector-6, Rohini, Delhi - 110085

...COMPLAINANT

VERSUS

M/s TDI Infrastructure Pvt. Ltd., office at Vandana Building, Upper Ground Floor, 11, Tolstoy Marg, Connaught Place, New Delhi – 110001

....RESPONDENT

Hearing:- 7th

Present:- Ms. Rishika Arora, Advocate, Counsel for the complainant
Mr. Shubhnit Hans, Advocate, Counsel for the respondent

JUDGEMENT:

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

1. The complainant had booked a commercial unit with the respondent company having approximate area of 771.15 sq. feet in TDI Mall at TDI City located at Kundli, Sonepat, Haryana in the year 2006 and booking amount in the sum of ₹7,80,000/- was paid. In the year 2007, the respondent company had executed an agreement with the complainant. As per the said agreement, the total cost of unit was ₹52,05,262/- and possession was to be delivered within 24 months as per clause (vii). To utter shock and surprise of the complainant, on 27.09.2008, the respondent company issued a letter intimating that registration of commercial unit of the complainant has been cancelled as the complainant has failed to clear the dues of the respondent company. The respondent has failed to refer to any of the letters/emails by which the respondent company had asked the complainant to make the balance payments. Hence, respondent company had no right to forfeit the entire advance amount of registration deposited by the complainant. A number of times respondent was requested to refund the amount of ₹7,80,000/- along with interest but of no avail. This Act of the respondent company has caused mental agony and harassment. The complainant approached learned District Consumer Dispute Redressal Forum, Sonepat vide Complaint no. 196 of 2013 seeking refund of ₹7,80,000/-. Vide order dated 08.12.2014, it was decided in favour of the complainant and respondent company was directed to

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refund the said amount. The aforesaid order was challenged by respondent before Hon'ble State Consumer Dispute Redressal Forum, Haryana vide Appeal no. 456 of 2016. The said appeal was dismissed by Hon'ble State Consumer Dispute Redressal Forum, Haryana vide order dated 18.11.2015. Revision Petition bearing no. RP/233/2016 was filed by the respondent company before Hon'ble National Consumer Dispute Redressal Commission, New Delhi. The said revision petition was allowed vide order dated 03.05.2016. The complaint filed by complainant was dismissed with liberty to approach appropriate Forum. The complainant was not satisfied with order dated 03.05.2016 passed by Hon'ble National Consumer Dispute Redressal Commission and filed review petition bearing no. 14 of 2017 which was dismissed vide order dated 14.08.2018 (wrongly written as 2017) passed by Hon'ble National Consumer Dispute Redressal Commission. The complainant had filed Complaint nos. 515 & 516 of 2022 before Hon'ble Authority seeking refund which was granted vide order dated 29.07.2022 passed by Hon'ble Authority. The respondent company was to give possession of the unit in the year 2009 but it has failed to handover possession within promised timeframe. The respondent has reduced the area of commercial shop from 771.15 sq. feet to 955.55 sq. ft. unilaterally and arbitrarily. The mala fide intention of the respondent company can also be established from the fact that the entire plan which was shown to the complainant at the time of booking stands changed. The hard-earned money of the complainant has been spent to buy the unit of the respondent company. The delay of more than 16 years in handing over possession

is harassment for the complainant which has caused immense stress, mental pain, frustration and ill health. By way of the present complaint, the complainant has sought compensation of ₹10,00,000/- for mental agony, harassment, stress, torture caused by the inactions of the respondent company, ₹2,00,000/- for loss of opportunity to the complainant who is a businessman by profession, ₹1,00,000/- for repetitive nature of default and ₹1,50,000/- for cost of litigation for filing 3 complaints viz; Complaint no. 515 of 2022, 3302 of 2022 and 3318 of 2022.

2. Upon notice, respondent has appeared through counsel and filed reply taking preliminary objections that when the respondent company had commenced the construction of the project, RERA Act was not in existence. The respondent company could not have contemplated any violations and penalties as stated in RERA Act. The Act cannot be applied retrospectively. Moreover the said project is not registered with Hon'ble Authority and hence cannot be adjudicated by this Court. If the provisions of the Act are to be applied retrospectively, it will erroneously effect and cause undue hardship and will also ruin the finances of the respondent company, which in turn will disturb the construction and development plan of the project. Giving retrospective application to the Act would be unjust, unwarranted and arbitrary. The present complaint is not maintainable and falls outside the purview of provisions of RERA Act. The present complaint is liable to be dismissed in limine. The complainant has sought vague reliefs and also sought an order to pay the amount

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to the complainant alongwith upto date interest as well as compensation and penalty. The complainant, in his prayer has sought exaggerated amount without giving any justification for the same. No documentary evidence has been annexed by the complainant to support his averments. The agreement was executed way back in the year 2009, much prior from the date when the RERA Act came into existence. The agreement executed between the parties is binding on the complainant. The RERA Act and Rules do not have the force to supplant already agreed upon terms and conditions of the Flat Buyer Agreement executed between the respondent company and the complainant. The complainant is bound by the terms of agreement and as such cannot withdraw his consent. The complainant has signed each and every page of the agreement. Hence each term is binding on the complainant. If at all the complainant deserves the compensation, it is only in terms of agreement executed between the parties. Delay in handing over possession, if any, cannot solely be attributed to the respondent company. The complainant himself is a defaulter in making the payments which directly hits the construction of the project. The respondent company had sent various reminders to the complainant to clear the dues. The complainant failed to make the payments in time and neglected his obligation to pay the outstanding amount to the respondent company. It is not the complainant who is liable for compensation as sought in the complaint, rather it should be the respondent company to whom the compensation must be paid. The registration of the complainant has already been cancelled by the respondent company vide letter dated 27.09.2008 for the delay

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caused by him in clearing the dues and the said fact has also been admitted by the complainant himself. The complainant is an investor and has accordingly invested in the project of respondent company for the sole reason of investing and earning profits and speculative gains. The complaint is liable to be dismissed. No documentary proof has been annexed by the complainant to prove the allegations attributed to respondent company with respect to booking made by complainant in the said project of the respondent or to prove any harassment allegedly caused to the complainant. The present complainant is time barred as the complainant has been sleeping over his rights for all long 8 years. The present complainant is hit by principle of delay and laches and the same is not maintainable before this forum. All the allegations made in the complaint are false, vexatious, misleading and frivolous. On merits, it is denied that possession of the unit was promised by the respondent company to the complainant within a period of 30 months from the date of execution of Builder Buyer Agreement i.e. latest by 2009. The contents pertaining to booking made by the complainant and payments made by him are not denied as it is matter of record. Handing over of possession has always been tentative and subject to force majeure conditions. It is denied that because of act and conduct of the respondent, complainant is aggrieved. No such harassment or loss has been caused to him as alleged. It is denied that the complainant was impressed with the assurances of the representative of the respondent company, rather complainant voluntarily at his own free will decided to invest in the project of respondent company with the sole motive to make speculative gain. It is denied

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that total cost of unit was ₹52,05,262/- and possession was to be delivered within 24 months as per clause 7 of the Builder Buyer Agreement. Total cost of the unit was subject to final calculation at the time of completion of construction of unit. The complainant is trying to misinterpret provisions of agreement executed between the parties. Because of being defaulter, the unit of the complainant has already been cancelled. At regular intervals various reminders were sent to the complainant to clear the pending dues. The complainant did not bother to pay. It is denied that the respondent company had no right to forfeit the entire advance registration amount deposited by the complainant. All the actions taken by respondent company are in accordance with agreement executed between the parties. No such letters/emails were sent by the complainant to the respondent company as alleged. The complainant has miserably failed to place on record any documentary proof to prove his averments. It is denied that the complainant had requested the respondent to refund the amount of ₹7,80,000/- alongwith interest. It is denied that the respondent company has reduced the area of commercial shop from 771.15 sq. feet to 955.55 sq. feet. It is denied that complainant deserves enhanced cost of construction. He is trying to leap in the dark by making wrong averments. It is also denied that the complainant has suffered immense harassment on account of delay and latches. The respondent company has not committed any violation of the Act or the Rules made thereunder. No cause of action has arisen in favour of the complainant and it is liable to be dismissed.

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

4. Perusal of file shows that the complainant has stated in his complaint that he had booked a commercial unit measuring 771.15 sq. feet in TDI Mall, TDI City, at Kundli, Sonepat, Haryana in the year 2006 and booking amount in the sum of ₹7,80,000/- was paid. At this stage, it is pertinent to mention here that neither the complainant has mentioned on which date the commercial unit was booked by him nor any receipt with regard to payment of ₹7,80,000/- has been attached with the complaint. He has further written that in the year 2007 respondent company had executed an agreement with the complainant. Neither the date of execution of agreement has been mentioned nor copy of Builder Buyer Agreement has been placed on record. Copy of dated 29.07.2022 passed by Hon'ble Authority in Complaint no. 515 of 2022 and 516 of 2022 both titled as Parvesh Jain v/s TDI Infrastructure Ltd. has been placed on record, in which in para no.2, it has been mentioned that the complainant had booked a shop on 09.12.2006. The date of payment of booking amount has also been mentioned as 09.12.2006. With regard to Builder Buyer Agreement, it has been mentioned that the complainant has attached an undated Builder Buyer Agreement and no date of delivery of possession of shop has been mentioned in the said agreement. The complainant has not attached the copy of Builder Buyer Agreement. It is admitted by the complainant that the respondent had cancelled his allotment vide letter dated 27.09.2008. The main argument of learned counsel for respondent is that

unit of complainant had already been cancelled on 27.09.2008. This issue is not to be gone into before this Court as to whether the amount forfeited by the respondent was legally forfeited or not. The complainant has wrongly mentioned that the respondent has illegally reduced the area from 771.15 sq. feet to 955.55 sq. feet. No document has been placed on record by the complainant either showing area of 771.15 sq. feet or 955.55 sq. feet. The plea of the complainant is that the respondent company was to give possession of the unit in the year 2009 but has not handed over possession till date. It is worthwhile to mention here that it is not apparent on the record as to from where the complainant has taken the year of 2009 for handing over possession of commercial unit particularly when copy of Builder Buyer Agreement has not been placed on record. In order dated 29.07.2022 passed by Hon'ble Authority, it has specifically been mentioned that copy of Builder Buyer Agreement was undated and no date of delivery of possession of shop has been mentioned. The averment of the respondent is that because of default in payment, the allotment of commercial unit in favour of complainant had already been cancelled on 27.09.2008. The complainant had filed complaint before learned District Consumer Disputes Redressal Forum, Sonipat seeking refund of amount paid by him along with interest. It was allowed vide order dated 08.12.2014. Appeal filed by respondent was dismissed by Hon'ble State Consumer Disputes Redressal Commission vide order dated 18.11.2015. Revision was filed by respondent before National Consumer Disputes Redressal Commission which was allowed vide order dated 03.05.2016

holding that the complainant was an investor and not a consumer. The complainant had filed review application before Hon'ble National Consumer Disputes Redressal Commission which was dismissed vide order dated 14.08.2018 with liberty to approach appropriate Court. The complainant filed Complaint no.515 of 2022 and 516 of 2022 before Hon'ble Authority which was allowed vide order dated 27.09.2022, copy of which has been placed on record as Annexure C-2. Admittedly refund of amount of ₹7,80,000/- was allowed alongwith interest. When the complaint was filed before Consumer Forum or State Commission or National Commission, intimation dated 27.09.2008 vide which the commercial unit of the complainant was cancelled by the respondent was not set-aside at any stage. Complaint was filed before Hon'ble Authority for refund of paid amount, which was allowed vide order dated 27.09.2022. At page no. 6, it has been observed by Hon'ble Authority that the cancellation of allotment of shop of the complainant in the absence of any demand letter having been issued was without justification. The cancellation has been observed as illegal, unfair and arbitrary. In the present case, the complainant has sought compensation to the tune of ₹10,00,000/- for mental agony and harassment on the ground that he had booked a commercial unit with respondent in TDI Mall at TDI City, Kundli, Sonipat in the year 2006 and booking amount in the sum of ₹7,80,000/- was paid. It is pertinent to mention here that the complainant has not annexed any document with regard to booking of commercial unit having an approximate area of 771.15 sq. feet in TDI Mall, TDI City, Kundli, Sonipat. There is no document with regard

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to payment of ₹7,80,000/- to the respondent. There is no document showing that the total cost of unit was ₹52,05,262/-. The complainant has alleged that the possession was to be delivered within 24 months as per clause 7. The copy of Builder Buyer Agreement has not been placed on the record. In reply, it has been stated by respondent that agreement was executed in the year 2009 but the respondent has also not placed on record any copy of agreement, without copy of agreement being attached by either the complainant or the respondent, the terms and conditions of agreement or allotment cannot be presumed. Learned counsel for the complainant has placed on record copy of judgment in Complaint no. 515 and 516 of 2022 both titled as Parvesh Jain v/s TDI Infrastructure Ltd. passed by Hon'ble Authority in which it has been specifically observed that undated Builder Buyer Agreement has been placed on the record and in that document also date of delivery of commercial unit has not been mentioned. If it is not apparent as to when possession was to be delivered, from which date and year amount of compensation for mental agony is to be calculated. By way of additional documents, learned counsel for the complainant has placed on record copy of order of District Consumer Disputes Redressal Forum, State Consumer Disputes Redressal Commission and National Consumer Disputes Redressal Commission. Firstly relief of refund was allowed by learned Consumer Forum but later on in revision, the complaint was ordered to be dismissed observing that the complainant was an investor. This finding has not been set-aside by any competent Court of law. Before Hon'ble RERA Authority, refund alongwith

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interest was granted to the complainant on the ground that he had paid ₹7,80,000/- for booking of commercial unit. If the complainant has invested the amount for the purpose of investment, obviously there is no mental agony or harassment of the complainant which can be attributed to delay in delivery of possession to the complainant. So far as using the amount deposited by the complainant to the respondent company is concerned, interest has also been ordered to paid by Hon'ble Authority vide its order dated 29.07.2022. Hence, no ground to pay any compensation for mental agony, harassment, stress and torture caused by inactions of the respondent company is made out.

5. The complainant has also sought ₹2,00,000/- for loss of opportunity to the complainant who is businessman by profession. The complainant has himself stated that he is a businessman by profession. There is no loss of opportunity to him for which compensation of ₹2,00,000/- is to be awarded.

6. The complainant has also sought ₹1,00,000/- for repetitive nature of default. In the absence of any Builder Buyer Agreement on the record, no compensation is being awarded for repetitive nature of default.

7. Since under all the three heads compensation is not being awarded, no amount is being granted to the complainant under the head of cost of litigation.

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8. Sequel to aforesaid observations, this complaint is ordered to be **dismissed** with no order to as costs. File be consigned to record room after uploading of this order on the website of the Authority.

02.05.2023

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(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This judgement contains 13 pages and all the pages have been checked and signed by me.

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(DR. SARITA GUPTA)
ADJUDICATING OFFICER