



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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COMPLAINT NO. 973 OF 2021

Kuldeep Singh

....COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

**CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar**

**Member
Member**

Date of Hearing: 10.10.2023

Present: - Mr. Sushil Kumar, Counsel for the complainant.
Mr. Shubhnit Hans, Counsel for the respondent.

ORDER (NADIM AKHTAR- MEMBER)

1. On last date of hearing dated 27.07.2023 Authority had observed as follows:-

"After hearing submissions of both parties, Authority observes that detailed order dated 29.07.2022 with respect to finalization of order dated 07.12.2021 in complaint no. 1117/2020, 3020/2019 and 3021/2019 towards issue of delay interest has already been passed. Relevant part is reproduced below:-

"On perusal of record, it is observed that all captioned cases were disposed of by order dated 07.12.2021. Grievances raised by complainants in all these were two fold: first relating to issues concerning the individual units allotted to them. These issues were decided on merits vide order dated 07.12.2021. Second set of grievances of complainants was regarding lack of infrastructural facilities in 'Tuscan City' as a whole.

Authority vide its order dated 07.12.2021 had observed that second set of issues regarding lack of infrastructural facilities were already under adjudication in complaint no. 2676/2019”.

In respect of issue of lack of infrastructural facilities, Authority deems it appropriate that respondent should conduct a meeting with the aggrieved allottees and RWA (complaint no. 2676/2019) in order to sort out their grievances. All parties should responsibly work towards a mechanism of speedy solution for the issues/grievances present in project-Tuscan City. Complainants are directed to provide agenda of meeting detailing out each issue separately in a tabular form so that all members attending meeting should know the issues for discussion beforehand. Said agenda be supplied to ld. counsel for respondent as well as to this Authority upto 10.08.2023. Meeting shall take place on 19.08.2023 at 3:00 pm at the site office of respondent which shall be attended by the complainants in person or one authorized representative only and director of respondent company so that effective decisions can be taken at the time of meeting. Ld. counsel for respondent is directed to circulate said agenda to all the requisite staff of respondent company for proper and effective meeting. Complainants are advised to co-operate with the respondent towards a workable solution for redressal of their grievances.

Respondent is directed to file minutes of meeting in the registry atleast one week prior to next date of hearing. Cases are adjourned to 10.10.2023.”

2. Today, ld. counsel for complainant has stated that complainant want to forego the relief pertaining to infrastructural facilities in relief sought of complaint with a liberty to file it afresh.
3. Perusal of record reveals that issues involved in captioned complaint except issue of infrastructural facilities was dealt at length vide order



dated 04.08.2022 whereby complainant was denied relief on account of grievances pertaining to non-payment of interest on account of delay in delivery of possession and alleged additional amount charged by respondent from complainant for the reason that complainant has already surrendered his rights qua unit as per his own undertaking vide NOC dated 03.04.2018. Further, respondent was directed to execute conveyance deed of unit in favor of complainant. In respect of infrastructural facilities, Authority had appointed local commissioner to inspect the site to evaluate existing condition of the project.

4. Order dated 04.08.2022 is reproduced below for reference:-

1. *Initiating his arguments, learned counsel for complainant stated that original allottee had booked a unit in project named 'Tuscan Heights-Phase-I', of the respondent situated at Kundli, Sonapat 08.02.2011. Flat No. T-1/1101, measuring 1390 sq. ft. was allotted to original allottee on 09.07.2011. Builder Buyer Agreement (hereinafter referred to as BBA) was executed between parties on 15.04.2013. As per BBA, delivery of the flat was to be given within 30 months from the date of agreement, thus deemed date of delivery was on 15.10.2015. Unit was transferred in favour of complainant on 04.02.2014. Complainant has paid Rs. 46,83,532/- till date against basic sale consideration of Rs. 27,45,480/-.*

Main grouse of the complainant is that even after delay of approximately six years from the date of booking, respondent has offered him only fit out possession of the flat on 08.12.2017, without obtaining Occupation Certificate. He further stated that respondent has unilaterally increased the super area from 1390 sq. ft. to 1654.10 sq. ft. i.e. by 264.10 sq. fts., which has put additional financial burden of Rs. 5,21,406/- on the complainant. Such a huge increase in super area of floor without consent of complainant is unreasonable and unjustified. Complainant has also impugned demand the of Rs. 50,000/- made by respondent on account of



Club Membership Charges(CMC). Aggrieved by these facts and demands, complainant is seeking return of these additional amounts charged from him.

Complainant further states that he had paid entire demanded outstanding amount against him at time of taking possession under compelling circumstances, as a result NOC for handover of possession of unit was issued by respondent on 03.04.2018.

In addition, learned counsel for complainant stated that respondent has also failed in providing adequate infrastructural facilities like permanent electricity connection, sewage treatment plant, water treatment plant, two fully operational lifts in tower, maintenance and security etc. Therefore, respondent be also directed to provide basic infrastructural facilities in the project. He is also seeking registration of unit in his favour after completion of the tower in which his unit is situated.

2. *Learned counsel for respondent stated that respondent had applied for grant of Occupation Certificate on 09.05.2014 but the same has not been granted to them by the Department of Town & Country Planning till date. Further, complainant had visited the allotted unit before signing 'NOC' and was in full knowledge of non-receipt of Occupation Certificate at the time of taking possession of the unit and signing 'NOC'. Despite these facts, complainant chose to take possession of the unit in April, 2018. NOC for handover of possession of unit was issued on 03.04.2018. Admittedly, complainant has shifted in the unit and is enjoying possession of unit since April, 2018 without any objection/grievance. Thus, grievances aired by complainant after three and half years of issuance of 'NOC' is an afterthought. Therefore, respondent is not liable to pay interest for delayed possession or refund any charges as alleged by complainant. He further stated that in case complainant had any grievance regarding alleged additional charges, he should have raised his objections at the time of taking possession of the unit. Therefore, present complaint is not maintainable at this belated stage.*

3. *After hearing both parties and perusal of records of the case, Authority observes that offer for fit out possession was issued on 08.12.2017. NOC for handover of possession of unit was issued by respondent on 03.04.2018. Admittedly, complainant had shifted and*



enjoying possession of the unit since April, 2018. He never approached or communicated with respondent company in any way expressing his dissatisfaction regarding alleged excess amounts charged on account of increase in apartment area from 1390 sq. ft. to 1654.10 sq. ft., or Club Membership Charges. No communication with respondent company regarding excess amount charged from him on aforesaid accounts has been placed on record by the complainant. No legal action was initiated by complainant against respondent company after taking possession of the unit. Therefore, it has to be presumed that complainant took possession of the unit and signed 'NOC' after he was satisfied with the unit as well as the project. Complainant has taken possession of unit and has been residing in the same since April, 2018 which implies that contractual relationship between parties had come to an end. The contract executed between complainant and respondent cannot continue to operate forever especially when both parties have given signed acceptance that all obligations towards each other are discharged and no obligations are left to be fulfilled. As per NOC for handover of Possession of unit dated 03.04.2018, complainant had taken possession of the unit on an undertaking signed by him that no claim against respondent survives. Relevant part of said NOC showing the undertaking given by complainant is reproduced below:

"I, Mr. Kuldeep Singh has received the NOC for my unit no:- T-1/1101 submit that I am fully satisfied regarding my unit and henceforth shall not claim anything from the company. I undertake to take the physical possession of my unit from the site within a period of ninety days from the receipt of this NOC and understand that after expiry of this period, the company shall not be liable and I shall not claim anything from the company."

In such scenario, now after lapse of about three and a half years from taking possession of unit, complainant cannot raise grievances qua non-payment of interest on account of delay in delivery of possession and alleged additional amount charged from him as he has already surrendered his rights qua unit as per his own undertaking vide NOC dated 03.04.2018. Therefore, no relief on this account can be granted to the complainant.

4. *Complainant is also seeking registration of unit in his favour after completion of the tower in which his unit is situated. Learned counsel for*



respondent has admitted that respondent has filed an application for grant of Occupation Certificate on 09.05.2014 and same is still pending before concerned department. Thus, Occupation Certificate is yet to be received by respondent. Authority is of the considered view that there is no bar on execution of conveyance deed in favour of an allottee if complainant so desires and respondent has no objection. The complainant has already paid full consideration. As such property of the unit in question has already passed on to the complainant. Possession has also been delivered. Now, at this stage execution of conveyance deed is nothing but updating of records regarding transfer of property having already taken place. Therefore, respondent is directed to execute conveyance deed of the unit in favour of the complainant.

5. Complainant has also raised additional grievances regarding lack of infrastructural facilities in 'Tuscan City Phase-1'. He has stated that respondent has failed in providing infrastructural facilities like permanent electricity connection, sewage treatment plant, water treatment plant, two fully operational lifts in tower, maintenance and security etc. In regard to these grievances relating to lack of basic infrastructural facilities in the project, Authority observes that allegations made by complainant need to be ascertained through a Local Commissioner. Therefore, Authority deems it appropriate to appoint a Local Commissioner to evaluate existing condition of the project and to ascertain deficiencies if any existing therein. Local Commissioner shall inspect the site in question in the presence of all parties. He shall inform both parties in advance of the date on which they would inspect the site. Parties are directed to be present at the site on the date of inspection.

Authority, however, observes that prima facie allegations of complainant regarding lack of basic infrastructure at site appears to be true on account of the fact that respondent has handed over possession of unit to complainant without obtaining Occupation Certificate. Even, no proof has been placed on record by respondent that basic facilities have been installed at site as per approved plans. Therefore, expenses of Local Commissioner shall be borne by the respondent company. Local Commissioner shall file his report before next date of hearing with an advance copies to the parties.

6. Case is adjourned to 15.11.2022."



5. Thereafter, local commissioner had visited the site on 19.10.2022 and submitted its report in registry on 07.11.2022. Said report was taken on record in order dated 07.02.2023 and case was adjourned to be listed alongwith complaint no. 2676/2019. Relevant part of the order dated 07.02.2023 is reproduced below for reference:-

“Pursuant to the order dated 04.08.2022, Authority had appointed a Local commissioner to visit the site and submit a report regarding existing condition of the project and to ascertain deficiencies, if any existing therein. Site visit was held on 19.10.2022 by local commissioner. Report of the same has been submitted to the Authority. A copy of the report of the local commissioner has been provided to both parties.

The report of the local commissioner was placed before the Authority today in Court and the observations recorded therein are as follows:

- a. The project cannot be considered as complete as the tower incorporating proposed club was still under construction*
- b. The roads were in a good condition though repairs were required at a few spots.*
- c. Street light were erected in the campus*
- d. Gate for entry/exit*
- e. No proper boundary wall*
- f. Parking in the basement of the towers but no demarcation or earmarking existed there for the residents.*
- g. Few small green areas were existing in the campus*
- h. No system for rain/storm water disposal was visible*
- i. No electricity sub-station due to less load required at this stage.*

Mr. Sushil Kumar referred to the findings of the local commissioner and asserted that even at present there exist several deficiencies in the project thus respondent has failed in providing basic infrastructural facilities at site. He further alleged that respondent has unilaterally increased the super area from 1390 sq. ft. to 1654.10 sq. ft. i.e. by 264.10 sq. fts., which has put additional financial burden of Rs.



5,21,406/- on the complainant without providing any detailed justification for the increase in the area.

Mr. Shubhnit Hans, learned counsel for the respondent submitted that the unit booked by the complainant is situated in the project 'Tuscan City' and the grievances raised by the complainant is similar to the grievances raised in Complaint no. 2676 of 2019 and a bunch of other complaints which is listed for hearing on 22.02.2023 for addressing the same. He requested that this complaint may also be listed along with those complaint for proper adjudication of the matter.

Accepting the request of the learned counsel for respondent, case is adjourned to 22.02.2023 to be listed along with Complaint no. 2676 of 2019 & ors. Meanwhile, respondent will file a detailed component wise justification for increase in area of the unit booked by the complainant before the next date of hearing with advance copy supplied to the complainant."

6. Meanwhile, complainant had filed an appeal bearing no. 726/2022 before the Hon'ble Real Estate Appellate Tribunal challenging the relief awarded by the Authority vide order dated 04.08.2022. Said appeal is now listed for hearing on 16.11.2023. Ld. counsel for the complainant has today requested to allow the complainant to withdraw/forgo the relief pertaining to infrastructural facilities with a liberty to file afresh.
7. Considering the statement of ld. counsel for complainant in captioned complaint, the relief pertaining to infrastructural facilities stands dismissed as withdrawn and in furtherance thereof **order dated 04.08.2022 already passed by the Authority attains finality.**



Complainant is at liberty to file fresh complaint for issues pertaining to infrastructural facilities.

8. In view of aforesaid observations, case is **disposed of**. File be consigned to record room.



.....
DR. GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]