



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No. – 3040 of 2022

Date of Institution: - 17.11.2022

Date of Decision: - 13.09.2023

Gaurav Suri, through their Authorized Representative Mr. Ravi Anand, r/o B-4
Inderpuri, New Delhi – 110012

...COMPLAINANT

VERSUS

M/s TDI Infrastructure Ltd., office at Mahindra Towers 2A, 2nd Floor, Bhikaji
Cama Place, New Delhi-110066

....RESPONDENT

Hearing:- 11th

Present:- Mr. Tarun Talwar, Advocate, Counsel for the complainant
Mr. Shubnit Hans, Advocate, Counsel for the respondent

Santa Gupta

JUDGEMENT:

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

1. In May 2006, the complainant had booked a plot bearing no. E-303, TDI City, Kundli, Sonapat, Haryana. In May 2006 a Plot Buyers Agreement was entered into between the complainant and respondent. It was one sided and all the terms and conditions were in favour of respondent only. On 30.06.2006, the respondent had issued a letter of allotment to the complainant confirming that the booked plot bearing no. E-303 has been allotted to the complainant. Respondent has failed to handover actual physical possession of the plot for the reasons best known to it. It clearly shows and proves that respondent wanted to cheat the complainant. The respondent had allotted the plot whose title was defective, which in itself is illegal in the eyes of law. Respondent had brutally killed the dreams of the complainant by playing with his hard-earned money and using that money for its own purpose. The property, whose title was not clear, was sold to the complainant and all the payment of sale consideration of plot was given by the complainant without any delay. The act of respondent has caused mental agony to the complainant. There was failure and deficiency of services on the part of respondent. Till the date of filing of complaint i.e. 17.11.2022 an amount of ₹42,56,242/- including the registration and stamp duty charges has been paid by the complainant in respect of the aforesaid property. The respondent had been

using the money of the complainant for approximately 16 years without any justified reason. Because of blocking the huge amount of the complainant, it has caused huge monetary loss to him. On 07.04.2008, the respondent had issued a letter to the complainant intimating offer of possession along with statement of account which in itself was a means to cheat the complainant as title of the land was not clear. Respondent had issued a false offer of possession. Till date the title of land is not clear. Respondent has failed to give actual physical possession of the plot in dispute. The respondent has played with the emotions of the complainant. All the dreams of the complainant have been shattered. It has caused mental pressure on the complainant. Even after issuance of false offer of possession, respondent took registration charges, stamp duty charges of the aforesaid plot despite knowing the fact that title of the land was not clear, which itself is illegal and punishable as respondent was not legally entitled to demand registration charges for a property whose title was not clear. The complainant vide emails and letters kept reminding the respondent about the possession of the property and also requested respondent to handover the possession but there was no response from the respondent, which clearly proves mala fide intentions of committing fraud with the complainant. Aggrieved by such fraudulent and illegal acts of the respondent, the complainant had issued a legal notice to the respondent on 28.11.2021 claiming refund along with interest and compensation. The complainant is seriously affected by illegal and fraudulent acts of the respondent, even after receiving whole of the amount, respondent has failed to give physical

possession causing great mental agony and monetary loss to the complainant. The complainant had filed a Complaint bearing no.1455 of 2021 wherein order of refund was passed by Hon'ble Authority. By way of the present complaint, the complainant has sought compensation to the tune of ₹20,00,000/- on account of mental agony and monetary loss suffered by the complainant and cost of litigation to the tune of ₹1,00,000/-.

2. Upon notice, the respondent has appeared and filed reply taking preliminary objections that respondent company had commenced construction of the project namely TDI City, Kundli, Sonapat, Haryana when RERA Act was not in existence. Respondent company could not have contemplated violations and penalties as stated in RERA Act. The Act penalizes the developers of the project much more severely than agreed terms between the complainant and the respondent company. The Act cannot be applied retrospectively. 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 given retrospective effect, it would be erroneous, cause undue hardship and will ruin the finances of respondent company which will also disturb the construction and development plan of the project of the respondent. Giving retrospective effect, it would be unjust and unwarranted and arbitrary. The present complaint is not maintainable and falls outside the purview of provision of RERA Act. The present complaint is not liable to be dismissed in limine. The complainant has filed complaint seeking vague reliefs and has sought an order to pay amount to the complainant along

with up to date interest as well as compensation and penalty. In its prayer clause, the complainant has sought random exaggerated amount without giving any justification for the same. No documentary evidence has been annexed by the complainant along with complainant to support his averments. The agreement was executed much prior to the date of coming into existence of the RERA Act. The agreement executed between the parties is binding on the buyer/allottee/complainant. The RERA Act and the Rules do not have force to supplant already agreed upon terms and conditions of Plot Buyer Agreement. The complainant is bound by the terms of agreement and he cannot withdraw his consent. The complainant is an educated person and has signed on each and every page of the agreement, hence each term is binding on the complainant. If at all the complainant deserves compensation, it is only in terms of agreement executed between the parties. The delay in completing the project cannot be solely 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 has sent various reminders to the complainant to clear the dues. He has failed to make the payments on time and neglected his obligation to pay the outstanding amount to respondent company. Instead of complainant, it is the respondent company to whom the compensation must be paid due to delay in making the payment on the part of complainant. Complainant is an investor and has accordingly invested in the project of respondent for the sole reason of investing and earning profits and speculative gains. The complaint is barred by

limitation as the complainant had been sleeping over his rights for all long eight years. The present complaint is hit by principles of delay and laches and is not maintainable before this Court. The Court of Adjudicating Officer is not having jurisdiction to adjudicate the issue. The complaint filed by the complainant before the Authority has not attained finality. The present complaint is liable to be dismissed on this ground only. All the averments made by complainant which are false, vexatious, misleading, frivolous and have been categorically denied. On merits, it has been submitted that the complainant had booked a plot bearing no. E-303, TDI City, Kundli, Sonapat. It has been denied that till date the complainant has already paid an amount of ₹42,56,242/- including registration charges. It is also denied that till date the title of the land is defective. It is denied that in May 2006 Plot Buyer Agreement was entered into between the parties. It has been denied that Plot Buyer Agreement is biased and one sided in favour of the respondent only. The complainant had voluntarily invested in the project of respondent company. It has been denied by the respondent that the title of the property was not clear and property with defective title has been sold to the complainant. It is submitted that the respondent company has already made an alternative offer vide letter dated 16.10.2018 having a better location bearing no. H-414, H-415 and F-476 in place of originally allotted number E-303 due to unforeseen circumstances, which complainant has failed to acknowledge. The complainant has not accepted the company's offer till date and has not replied. He is knowingly misleading the Court by concealing this important fact. The

letter of offer dated 16.10.2018 and further reminder dated 28.09.2019 were sent to complainant as a goodwill gesture. The complainant had committed default in payment occasionally and several cases of dishonor of cheques were pending against the complainant vis-à-vis bank. The complainant has also failed to pay non-construction penalty amount of ₹20,62,141.27/-. The final statement of account dated 19.01.2023 has been attached. It is not denied that on 07.04.2008, the respondent had issued a letter intimating offer of possession along with statement of account. It is denied that title of the land was not clear and respondent had issued false offer of possession to cheat the complainant. Handing over of possession has always been tentative and subject to force majeure conditions. The present complaint is based on conjectures and surmises. The complainant is only trying to defame the respondent company with bald averments and allegations. The complainant was being reminded through letters about taking possession of the property. Even after issue of offer of possession there was no response from the respondent. It is also denied that any legal notice was issued by the complainant to the respondent on 28.11.2021 and it was not replied. The respondent company is not in receipt of any such request of the complainant. The respondent has prayed for dismissal of the complainant.

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

4. As per version of the complainant, he had booked a plot in TDI City, Kundli, Sonapat in the project of respondent. Though copy of Builder Buyer

Agreement has been placed on record by learned counsel for the complainant but it is pertinent to mention here that these are blank papers neither filled nor signed by any of the parties. In the complaint itself, the complainant has stated that in May 2006 a Builder Buyer Agreement was entered between the complainant and the respondent. It is the version of the complainant that on 30.06.2006 the respondent had issued letter of allotment of plot bearing no. E-303 TDI City, Kundli, copy of which has been placed on record by learned counsel for the complainant as Annexure C-2. It is the version of the complainant that since the title of the respondent over land was defective, possession was not handed over to him. It is worthwhile to point it out here that there is only oral version of the complainant that title of the respondent over the land on which the plot was to be allotted to him, was not clear, he has not placed on record any document showing that title of respondent over the land was not clear. In reply filed by respondent, it has been denied that the tile of respondent was defective. Despite that the complainant did not try to place on record any document showing defective title on the land on which Plot no. E-303, TDI City, Kundli, Sonapat was allotted to the complainant. In the absence of any documents placed on record or any evidence adduced by the complainant, it cannot be presumed that the title of respondent over the land was defective and in that eventuality respondent was not able to hand over possession. The complainant has himself mentioned in the complaint that on 07.04.2008, the respondent had issued a letter to the complainant intimating offer of possession along with statement of account.

Though, it has further been mentioned that the offer of possession issued by the respondent was false as till date the title of land was not clear, without any evidence on record, it cannot be presumed that the said offer of possession was false. The complainant had filed Complaint no.1455 of 2021 seeking refund of his paid amount. The respondent has stated that on 16.10.2018, alternate plot was offered to the complainant in place of original allotted Plot no.E-303, TDI City, Kundli, Sonapat. Though, it is the version of the complainant that the alternate plot was not acceptable to him, the complaint is silent as to what had happened after 07.04.2008 when allegedly offer of possession was issued by the respondent to the complainant. It has nowhere been written that despite offer of possession being made by the respondent to the complainant, it was not taken as the title of the respondent was defective. There is no correspondence between 07.04.2008 to 16.10.2018. Legal notice was also issued by the complainant to the respondent on 28.11.2021. After that complaint was filed by the complainant before Hon'ble Authority. Since copy of Plot Buyer Agreement which has been placed on record is blank, undated and unsigned, it will be presumed that no agreement was entered into between the complainant and the respondent. Reasonable time of delivery of possession will be taken as three years from the date of allotment i.e. May 2006 and the deemed date of handing over possession would come as May 2009. As per his own version, the respondent had issued offer of possession on 07.04.2008 which was well within the period, within which the respondent was to offer possession to the complainant. Though to accept or not the alternate offer, which

was made on 16.10.2018 is the discretion of the complainant, yet the complainant has failed to mention anything happened in between 07.04.2008 to 16.10.2018. The position would had been different if the delay on the part of respondent had been duly explained by the complainant. The complainant opted to remain silent w.e.f. April 2008 to October 2018. Since, he himself has stated that offer of possession was made by the respondent on 07.04.2008 though as per his allegation it was not a valid offer, case for awarding compensation on the ground of mental agony and harassment is not made out.

5. Hence no amount of compensation is being granted on account of mental agony and harassment.

6. No other relief is claimed by the complainant. Cost of litigation is not being awarded as the main relief is not being granted in favour of the complainant.

7. In view of foregoing discussion, this complaint is ordered to be **dismissed** being devoid of any merit. Both the parties are left to bear their own costs. File be consigned to record room after uploading of this order on the website of the Authority.

13.09.2023


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(DR. SARITA GUPTA)
ADJUDICATING OFFICER

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


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(DR. SARITA GUPTA)
ADJUDICATING OFFICER