HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 1032 OF 2019

ARCHANA GUPTA ....COMPLAINANT(S)

VERSUS

TDI INFRACORP(INDIA) LIMITED ....RESPONDENT(S)

CORAM: **Rajan Gupta** **Chairman**
Anil Kumar Panwar **Member**

Date of Hearing: 17.09.2019

Hearing: 2nd

Present: - Ms. Vaishnavi Iyer, Counsel for the complainant.

Mr. Ajay Ghenges, Counsel for the respondent.

ORDER (RAJAN GUPTA-CHAIRMAN)

1. The present review application has been filed by the complainant seeking rectification in its final order dated 13.03.2019. Ld. Counsel for the complainant stated that the complainant had filed complaint no. 1037 of 2019 before this Authority, which was disposed of by the Authority vide order dated 13.03.2019. As per this final order dated 13.03.2019 the Authority directed as follows:

> *"the respondents are directed to send a fresh agreement to the complainants by clearly showing the carpet area of the apartment, the additional area other than the carpet area which shall be constructed as part of the project, the pricing of the apartment chargeable on the basis of the carpet area and the cost of super area should be loaded to the carpet area only. The cost of the apartment should be shown as the basic sale price plus other charges like EDC, IDC applicable taxes, GST etc. Nothing more has to be demanded from the complainants than so indicated.*
>
> *The respondent shall send a revised draft agreement in accordance with these directions within a period of 30 days. If the complainants still feels aggrieved, he will have the liberty to come back to the Authority with a fresh complaint."*

So, the complainant has filed the present review application before the Authority because the respondent has not complied with the order of the Authority. Therefore, the complainant seeks rectification in the final order dated 13.03.2019 seeking relief of refund of the amount paid by the complainant.

2. The Ld. Counsel for respondent sated that the final order dated 13.03.2019 was passed against them ex-parte, but he is willing to execute the order by sending the agreement to the complainant within 30 days.

3. In the view of above contentions of complainant and respondent, the Authority is of the view that, merely because the respondent has not sent the agreement does not form the ground of ordering refund as prayed by the complainant. The order dated 13.03.2019 cannot be modified. Since, the respondent is also willing to execute the order dated 13.03.2019, the Authority directs that respondents shall send a revised draft agreement as per its final order dated within a period of 30 days. If the complainant still feels aggrieved, he will have the liberty to come back to the Authority with a fresh complaint.

Review application dismissed. **Disposed of.** Order be uploaded on the website and files be consigned to the record room.

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RAJAN GUPTA

[CHAIRMAN]

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ANIL KUMAR PANWAR

[MEMBER]

Haryana Real Estate Regulatory Authority • Panchkula •

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Complaint No. : 1037/2018
Date of Hearing : 13.03.2019
Hearing : 4th

Archana Gupta .... **Complainant**

Versus

TDI INFRACORP(India) Ltd. ....**Respondent**

CORAM :

1. Sh. Rajan Gupta, ...**Chairman**
2. Sh. Anil Kumar Panwar, ...**Member**

APPEARANCE :

1. Sh. Amarpal, Counsel for complainant
2. None for respondent

ORDER :

This is the 4th hearing of the matter. In first two hearings proxy counsel for the respondents had appeared, each time seeking adjournment because arguing counsel was not available. On the 3rd hearing on 12.2.2019 none appeared for the respondent. Today in the 4th hearing again nobody is present on behalf of the respondent. Reply of the respondent however, has been received and is a part of the record. Since today is the 4th hearing and arguing counsel or any representative of the respondent is not present, the Authority decides to proceed ex-parte to dispose of this matter.

2. The case of the complainant is that she had booked an apartment in the "Water Side Floors, Lake Grove City Project, Sector-64, Sonepat of the respondent. Between May, 2018 when the apartment was booked and August, 2018 Rs.6.50 lakhs has been paid as earnest money. According to the complainant, in the registration form the area of the residential built up floors was shown to be 1400 Sq.ft whereas now the respondent have sent her a draft agreement form in which the carpet area is written as 990 Sq ft. only. Further, the complainant states that the total sale consideration has been increased to over Rs.59 lakhs as against Rs.56 lakhs shown in the registration form. Thirdly, the respondents are charging more than 10% of the basic sale price as earnest money without signing the agreement, therefore they are violating the provisions of The Real Estate (Regulations and Development) Act, 2016 framed by this Authority. For these reasons the complainant seeks refund of the money paid.

3. In the written statement the respondents have stated that the basic sale price written in the registration form was exclusive of charges detailed in para 6 of Annexure-A. The para 6 of Annexure –A however, speaks only of the earnest money and the interest payable in the event of default in making payments. It has further been submitted by the respondents that on account of some discounts, in the basic price was

reduced to Rs.49 lakhs and there-after to Rs.48.20 lakhs. However, GST of nearly 5.76 lakhs was payable on the basis of which the price now comes to Rs.53.93 lakhs as against Rs.56.00 lakhs. Accordingly, it has been stated that sale price has not been increased. Thus according to the respondent the total sales price inclusive of GST is Rs.53.93 lakhs. Respondents have made no mention of whether other taxes and charges including EDC and IDC will be charged in addition or they are already included in the quoted price. With regard to the area the respondent states that super area has always been 1400 Sq.ft. and there was never any agreement for 990 Sq.ft area.

4. On the basis of the submission made by both the parties it is concluded and ordered as follows:-

(i) In the context of the dispute in the matter regulation 3(a) of the RERA Regulation "The Haryana Real Estate Regulatory Authority, Panchkula (Registration of Projects), Regulations, 2018 is reproduced below:-

3(a)- Price of an apartment in a real estate project shall be charged by the promoter from the apartment buyers only on the basis of carpet area of the apartment.

By the virtue of the above provisions in the regulation after coming into force of the regulations, all developers should execute

agreements with apartment buyer by loading the entire cost of the project on the carpet area of the apartment. In the agreement the carpet area and the super area other than the carpet area could be shown separately but the cost of the apartment has to be charged on the basis of the Sq.ft. of the carpet area. The registration agreement sent by the respondent to the complainant reads:-

"We wish to register ourselves for the allotment of a residential built-up floor approx. 1400 sqft., tentative super area, named as "Waterside Floors", in "TDI LakeGrove City" at Kundali, Sonepat, Haryana, being developed by M/s TDI Infracorp Ltd. At basic price of Rs. 56,00,000/-."

It violates the aforesaid regulation. This part of the agreement should accordingly be corrected.

(ii) As per the provisions of the Act not more than 10% of the cost of the apartment could be charged without first entering into a written agreement. Admittedly, cost of the apartment in this case is Rs.53.93 lakhs. Accordingly, the respondent could not have demanded more than 5.93 lakhs as earnest money. Further, clause 6 of the Annexure-A with the registration form in which 15% amount has been demanded, as the earnest money is also violative of the provisions of the Act, Rules and Regulations. Further, the said clause 6 also provides that 18% interest shall be charged in the event of delay payment. This provision

is also violative of the Act and the Rules. As per Rule 15 of the HRERA Rules in the event of delayed payment the respondent could charge @ SBIMCLR plus 2% and not more.

It appears that respondents have not studied the laws and regulations relating the RERA Act and the Rules and Regulations framed thereunder. Aforesaid provisions of the Registration form clearly are violative of law.

(iii) From the written statement especially sub para 1 of para 3, it is made out that respondents are changing their position with regard to total cost of the apartment. The basic price has been reduced twice and still nothing has been written about the EDC and IDC charges to be payable. It must be specified to the complainants precisely and clearly.

(iv) In the light of foregoing discussions, the respondents are directed to send a fresh agreement to the complainants by clearly showing the carpet area of the apartment, the additional area other than the carpet area which shall be constructed as a part of the project, the pricing of the apartment chargeable on the basis of the carpet area and the cost of super area should be loaded to the carpet area only. The cost of the apartment should be shown as the basic sale price plus other charges like EDC, IDC applicable taxes, GST etc. Nothing more has to be demanded from the complainants than so indicated.

(v) The respondents shall send a revised draft agreement in accordance with these directions within a period of 30 days. If the complainant still feels aggrieved, he will have the liberty to come back to the Authority with a fresh complaint.

Disposed of. The order be uploaded on the website and files be consigned to the record room.

Anil Kumar Panwar
Member

Rajan Gupta
Chairman