



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 131 OF 2019

Brij Mohan GuptaCOMPLAINANT

VERSUS

TDI Infrastructure Ltd.RESPONDENT

COMPLAINT NO. 781 OF 2019

Ashok KumarCOMPLAINANT

VERSUS

M/s TDI Infrastructure Ltd.RESPONDENT

COMPLAINT NO. 782 OF 2019

Rama AggarwalCOMPLAINANT

VERSUS

TDI Infrastructure Ltd.RESPONDENT

CORAM: Rajan Gupta	Chairman
Anil Kumar Panwar	Member
Dilbag Singh Sihag	Member

Date of Hearing: 24.09.2019

Hearing: 4th Hearing in Complaint No. 131 of 2019

3rd Hearing in Complaint No. 781 of 2019

2nd Hearing in Complaint No. 782 of 2019

Present: - Mr. Vikas Deep, Counsel for the complainant.
Mr. Shobit Phutela & Mr. Shubhnit Hans,
Counsel for the respondent.

ORDER (ANIL KUMAR PANWAR - MEMBER)

1. The complainants in the above titled cases had made part payments to the respondent in the year 2005-06 for purchase of plot/flats in his project named "TDI City" situated in district Sonapat. Their grievances is that the respondent has neither issued them the allotment letter nor has refunded their already deposited amount.

2. The respondent's plea is that he had been already granted an occupation certificate for his project by the concerned department and the



complainants are not entitled to take refund because they had not responded to the various demand letters sent to them and as a result their allotments have been already cancelled. The respondent has accordingly prayed for dismissal of the present complaints.

3. Learned counsels for the parties have been heard and record has been perused.

4. The respondent has produced on record the letters vide which complainants' allotment were cancelled. Receipts regarding dispatch of cancellation letters were also attached in complaint case Nos. 131 and 782. His plea in complaint case No. 781, however, is that the relevant postal receipt has been misplaced.

5. The contention of the complainants' counsel is that intimation about cancellation of allotment was never conveyed to the complainants and the receipts relied upon by the respondent cannot be used against the complainants because the same do not bear their addresses.

6. The Authority observes that cancellation of allotment visits an allottee with penal consequences because it takes away from him his right to have the booked property at the agreed price. The respondent thus owed a duty to follow principles of audi alteram partem (no person shall be judged without a fair hearing) before passing the cancellation letters against the complainants.



The cancellation letters produced on record indeed recite that the complainants had committed defaults in making payments for which repeated requests were sent to them, but the same are silent on the point as to when the alleged payments were demanded and what exactly were the demanded amounts. The respondent could have filled up this lacuna by placing on record the original demand letters and subsequent reminders sent to the complainants but not even an iota of such evidence was brought before the Authority.

That apart, cancellation letter was not accompanied by the amount which the respondent was duty bound to refund to the complainants after forfeiting the amount, if any, as permissible by the terms of allotment agreement. The respondent rather continued to withhold the amount refundable to the complainants.

For the reasons and lack of formalities as discussed above, the Authority will hold that there was no proper cancellation of allotments and the complainants are, therefore, entitled to refund of the amount already paid to the respondent.

7. As a matter of fact, even the respondent's learned counsel during arguments submitted that respondent is ready to refund the amount but only without payment of interest. When asked as to how the respondent can avoid his liability to pay interest in a situation when he had illegally kept withholding the amount which was required to be remitted to the complainants



along with the cancellation letters, the learned counsel could not furnish any logical explanation for not paying the interest.

8. The matter can be scrutinized even from a different angle. The complainants have averred that the respondent has not issued them allotment letters till date. The respondent could not produce the proof of issuance of allotment letters. In paragraph 4 of his reply on merits, the respondent has averred that 20% amount was paid at the time of booking and thereafter 10% amount was payable at the time of allotment. If so, the respondent was entitled to raise any further demand from the complainants only after issuance of allotment letters. Since the respondent could not prove that allotments of a specific flat/plot was made to the complainants and its intimation was duly sent to them, there was infact no occasion for the respondent to raise subsequent demands or even to cancel the allotments. In these circumstances, the complainants have a justifiable cause for seeking refund of the entire amount which they had paid to the respondent.

9. Faced in the aforesaid situation, learned counsel for the respondent has argued that the present complaints are time barred for the reason that cancellation was made in the year 2006 and the complaints have been filed in the year 2019. The argument cannot be accepted because the Authority has already observed that the cancellation was not a proper cancellation and the respondent had kept withholding the amount illegally. So,



cause of action accrued in favour of complaints was recurring in nature and the complaints thus cannot be held time barred.

10. For the reasons recorded above, the Authority finds, it is a fit case for refund. So, the present complaints are allowed and the respondent is directed to refund the amount of Rs. 4,50,000/-, Rs. 4,00,000/- & Rs. 4,00,000/-respectively alongwith interest @ 9% per annum from the date of deposit till the date of realization of the refundable amount.

11. Cases are **disposed of** and after uploading the order on the website of the Authority, files be consigned to the record room.


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RAJAN GUPTA
[CHAIRMAN]


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ANIL KUMAR PANWAR
[MEMBER]


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DILBAG SINGH SIHAG
[MEMBER]