



Complaint No. 1111 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1111 OF 2019

Shalini Mittal

....COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Anil Kumar Panwar

Member

Date of Hearing: 27.02.2020

Hearing: 6th

Present: - Mr. Vikas Deep, Counsel for complainant.

Mr. Shobit Phutela & Shubhmit Hans, Counsels for respondent.

ORDER (RAJAN GUPTA-CHAIRMAN)

1. Today is sixth hearing of the case. In the fourth hearing, respondent was directed to issue a statement of accounts as per the guidelines issued by the Authority in Complaint No. 607 of 2018 titled Vivek Kadyan Versus M/s TDI Infrastructure Pvt. Ltd., Complaint No. Parmeet Singh vs M/s TDI Infrastructure Pvt. Ltd. and Complaint No. 83 of 2019 titled Adesh Vats Versus M/s TDI Infrastructure Pvt. Ltd. and Complaint No.113 of 2018 titled Madhu Sareen V/S BPTP Ltd. He was also directed to file communications made with department of Town & Country Planning, Haryana for grant of Occupation Certificate after submission of their application on 31.03.2017 and the latest status regarding the same. On the last hearing, respondent had filed statement of accounts dated 10.01.2020 and supplied its copy to the complainant which reflects Rs. 11,89,161/- as payable to the complainant on account of delay compensation.

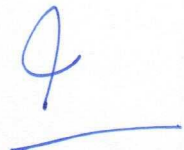
2. Complainant in the present complaint is seeking refund of the amount paid by her to the respondent along with interest; with an alternative prayer of possession along with compensation for delayed delivery of possession. Learned Counsel for the complainant stated today, that the complainant is now interested in having possession of the floor along with the compensation for the delay in handing over the possession till actual handover



of the unit. He accepted the calculations made in the statement of accounts dated 10.01.2020 and stated that the case is squarely covered by the principle laid down by this Authority in Complaint No. 607 of 2018 titled as "Vivek Kadyan Versus M/s TDI Infrastructure Limited and others" vide order dated 29.01.2019 and Complaint No 83 of 2019 titled as "Adesh Vats Versus M/s TDI Infrastructure Limited and others" vide order dated 23.04.2019 and requested the Authority to decide the present complaint in view of the aforementioned decisions.

2. The case of the complainant is that she had booked a floor in the project named "Espania Royale Floors (KRF)" of the respondent situated at Sonipat on 09.03.2012. Unit No. RF-56/Duplex measuring 1244 sq. ft. was allotted to her. Floor Buyer Agreement (hereinafter referred to as FBA) was executed between the parties on 05.04.2013. Delivery of the flat was to be made within 30 months from the date of agreement, thus deemed date of delivery was 05.10.2015. Payments were to be made under Construction linked payment plan. She has paid about Rs.27,66,715/- till 27.06.2016 against the Basic Sale Price of Rs. 26,00,000/-. Total sale consideration inclusive of EDC/IDC was Rs.29,49,085/-. Thus, she has paid more than 90% of the total sale consideration.

The grouse of the complainant is that there is a delay of about five years in delivery of the possession and till date the respondent has not



offered her the possession of the floor. Complainant in her complaint had originally prayed for refund of the amount paid by her to the respondent along with interest; with an alternative prayer of possession along with compensation for delayed delivery of possession in her complaint. Today, the learned Counsel for the complainant has confined his prayer to seeking possession of the floor along with the compensation for the delay in handing over the possession till actual handover of the unit.

3. The respondent has denied all the allegations and has raised several objections as follows:

i) That provisions of Real Estate (Regulation and Development) Act, 2016 are not applicable to the present case because the FBA was executed between the parties much prior to coming into force of the Act, hence the terms of agreement executed between the parties only shall be binding on them.

ii) The present project is duly registered by the Authority. The respondent had even applied for grant of Occupation Certificate on 31.03.2017. Respondent states that delivery of possession could not be made due to pendency of an application for grant of Occupation certificate with the Director, Town & Country Planning department since 31.03.2017. Once the occupation certificate is granted possession of the flat will be handed over.

4. The Authority has considered the written as well as oral pleadings of both the parties. It observes and orders as follows:-



i) Jurisdiction:

First of all the respondent has challenged the jurisdiction of this Authority for the reasons that the agreement between the parties was executed prior to coming into force of RERA Act. This objection is not sustainable in view of the law laid down by this Authority in Complaint case No.144- Sanju Jain Vs. TDI Infrastructure Ltd. The logic and reasoning in that complaint are fully applicable on the facts of this case as well.

ii) Increase in Area:

Learned counsel for the complainant today has accepted the calculations of area shown vide statement of accounts dated 10.01.2020. Complainant has agreed to pay for enhanced revised super area from 1224 sq. fts to 1296 sq. fts. i.e. 72 sq. fts. to the extent it is in consonance with the principles laid down by the Authority in its decisions in Complaint No. 607 of 2018 titled as "Vivek Kadyan Versus M/s TDI Infrastructure Limited and others" order dated 29.01.2019 and Complaint No 83 of 2019 titled as "Adesh Vats Versus M/s TDI Infrastructure Limited and others" order dated 23.04.2019.

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iii) Delay in Offer of Possession:

Admittedly, the FBA between the parties was executed on 05.04.2013. As per Agreement delivery was to be made within 30 months from the date of execution of FBA. Therefore, there is no controversy that as per FBA, the deemed date of possession of the unit was in 05.10.2015. The payments made by the complainant to the respondent are also admitted. The respondent further states that he had applied for OC on 31.03.2017. Further since all formalities have already been completed, he is hopeful that the Occupation Certificate will be granted soon. He states that the unit will be delivered to the complainant immediately on payment of balance amount by the complainant.

Since, the respondent has not yet been granted Occupation Certificate from the concerned department, it is presumed that the application for issuance of Occupation Certificate vide letter dated 31.03.2017 was defective due to which the Department of Town & Country Planning has not yet granted him the Occupation Certificate.

Respondent had earlier filed a statement of accounts dated 10.01.2020 and supplied its copy to the complainant which reflects Rs. 11,89,161/- as payable to the complainant on account



of delay compensation till 13.01.2020. The calculations made by the respondent in the revised statement of accounts dated 10.01.2020 are acceptable to the complainant. As per the aforesaid statement of accounts Rs.11,89,161/- is shown as the amount payable to complainant as compensation on account of delay in handover of possession of the unit. The said account statement also reflects Rs. 05,32,303/- as amount payable by the complainant to respondent. Thus, the net amount payable to the complainant after adjustment of receivable and payable comes to Rs.6,56,858/-.

In these circumstances, the complainant is given an option to either takeover possession of the unit along with the net amount of delay compensation after adjustment of receivable and payable which comes to Rs.6,56,858/- or she can opt to take delivery of the unit on receipt of Occupation certificate by the respondent and in that case she shall be entitled to be compensated for the delay caused in delivery of possession from the deemed date of possession till the date of grant of Occupation Certificate by the concerned department. In the latter case, the amount of delay compensation payable to the complainant will continue to accrue in favour of the complainant till the date of grant of Occupation Certificate by the concerned department and



the respondent shall be bound to handover possession on obtaining Occupation Certificate and pay the total accrued delay compensation amount to complainant on receipt of Occupation Certificate.

This Authority has disposed of a bunch of petitions with the lead case Complaint No.113 of 2018 titled Madhu Sareen V/S BPTP Ltd. There was consensus on all the issues except on the issue of compensation for delayed delivery of possession. Further logic and arguments in this regard were given by the dissenting member in Complaint case No.49 of 2018- Parkash Chand Arohi V/s Pivotal Infrastructures Pvt. Ltd. It is hereby ordered that the ratio of the said judgements will be fully applicable in this case for determining the quantum of compensation for delayed delivery of possession.

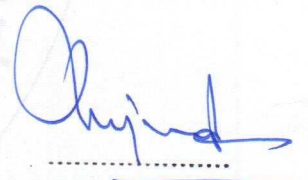
5. Now, in case the complainant opts for taking immediate possession of unit she will be entitled to receive the net amount of delay compensation after adjustment of receivable and payable which comes to Rs.6,56,858/-. The Authority in such case directs the respondent to handover the physical possession of the unit within 30 days of uploading of this order and pay Rs.6,56,858/- to the complainant within 90 days of the uploading of this order on the website of the Authority.



In case the complainant exercises her option to wait for the delivery of possession till the obtaining of Occupation Certificate by the respondent, she shall be entitled to a further amount of delay compensation which shall continue to accrue in favour of her till the date of grant of Occupation Certificate from the concerned department. In such case, the respondent shall handover the possession of the unit on obtaining Occupation Certificate and shall be bound to pay the total amount of delay compensation accrued in favour of complainant till grant of Occupation Certificate.

Respondent shall also periodically apprise the complainant the status of the application for obtaining Occupation Certificate.

Disposed of accordingly. File be consigned to the record room and the order be uploaded on the website of the Authority.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]