HARYANA REAL ESTATE REGULATORY AUTHORITY
PANCHKULA, HARYANA

Date : 11.10.2018

Complaint No. 274 **Hearing :** 4th

Rajesh Kumar and Anr. ...Complainant

Versus

M/S TDI Infrastructure Ltd. ...Respondent

CORAM :

Sh. Rajan Gupta **Chairman**

SH. Anil Kumar Panwar **Member**

Sh. Dilbag Singh Sihag **Member**

APPEARANCE :

Shobhit Phutela Counsel for Respondent

Nidhi Jain Counsel for Complainant

ORDER

The present complaint is being disposed off vide this final order. This complaint was first heard on 24.07.2018, when the matter was adjourned at the instance of respondent with direction to file reply. The matter was next listed on 21.08.2018, when the matter was adjourned due to counsel of complainant having received the copy of reply late. The matter was then listed on 19.09.2018 when the counsel for complainant could not appear, the matter was adjourned. The matter was finally heard on 11.10.2018 and is being disposed off through this order.

2. The case of complainants is that the complainants Rajesh Kumar and Vinod Kumar(hereinafter referred to as complainant) jointly booked a residential flat in residential colony 'Espania Height' on National Highway-1, Sonepat, Haryana,

measuring 1390 sq. ft. at the rate of Rs. 16.25.90/- per sq. ft., this amounts to a total value of Rs. 22,60,000/- on 22.10.2011. The complainant deposited an amount of Rs. 2,50,000/- on the same day with the respondent. The complainant states that as per the advance registration form, the amount payable was as the following manner;

i. 10% at the time of booking;
ii. 10% within 30 days of booking; &
iii. 10% at the time of allotment

3. The allotment was to be made within a year from date of registration, but the respondent never served any allotment letter. Further, the next 10 % of the amount was due on 20.11.2011, which amounts to Rs. 2,07,000/-. This amount could be paid by the complainant by 07.12.2011, over a delay of few days. The Ld. Counsel for the complainant stated that the respondent served the complainant a letter dated 15.03.2012, whereby the respondent cancelled the booking on ground of non-payment of dues. The Ld. Counsel for complainant while stating her case, said that the aforesaid cancellation was illegal and not sustainable since the allotment was never done.

4. In view of above facts;

The complainant prays for the following reliefs:

i. The respondent be directed to refund the amount deposited i.e. Rs. 4,57,000/- with interest @ 18 % per annum compounded annually, from the respective deposits till the refund of amount, with cost of the present complaint, in the interest of justice.
ii. The respondent be further directed to pay the statutory compensation on amount deposited from the respective deposits till refund, in the interest of justice.

5. The Ld. Counsel for respondent while presenting his case said that the present complaint is beyond the period of limitation and the same cannot be entertained at this belated stage. The Ld. Counsel for complainant admitted to the fact that cancellation of booking was made in the year of 2012 and after expiry of six years, the complainant has no cause of action whatsoever. The Ld. Counsel for respondent further stated that the

complainant had defaulted on making due payment and therefore the booking was cancelled. Ld. Counsel of respondent gave detail of correspondences he made with the complainant so far, detail given in following paragraph.

Letter dated 20.10.2011 for demand of payment of Rs. 2,13,639, which fell due as 1st installment was served upon the complainant, again the same demand was raised vide letter dated 18.11.2011. That only a payment of Rs. 2,06,281 was received against the aforesaid demand. Further, on 27.12.2012 amount of Rs. 2,31,820 fell due, no payment with respect to the same was made by complainant. A letter dated 27.12.2011 for reminding the same was sent, finally a reminder dated 07.02.2012 to pay balance Rs. 2,39,178 was given to the complainant. Despite being well informed the complainant did not make an effort to clear the balance payment. Further, the Ld. Counsel for respondent stated that a pre-cancellation letter dated 22.02.2012 was sent, to which the complainant did not respond, as a result of which the respondent was constrained to cancel the booking vide letter dated 15.03.2012. It was further stated that the allotment in favor of complainant was done and unit EH05-301 was allotted.

6. The Ld. Counsel for respondent also challenged the jurisdiction of this Authority to entertain with the present complaint on the ground the present project is neither registered nor liable to be registered, since this project does not fall within the definition of an 'Ongoing Project' as defined under Section 2(o) of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as Rules). The Ld. Counsel for respondent further stated that the Rules have come into effect on 28.07.2017, whereas the respondent had applied for occupation certificate of this project on 12.09.2016 to DTCP, Haryana. Further, on combined reading of Section 3 and 2 (o) of the RERA Act, 2016 it can be concluded that any project in relation to which the occupation certificate has been applied on or before the publication of the rules, is outside the definition of an 'Ongoing Project', hence outside the purview of the Act.

7. However, the Authority turned down the arguments of the Ld. Counsel for Respondent, observing that this Authority has already dealt at length

with this issue at hand and accordingly ordered in Complaint No. 144, titled as 'Sanju Jain v. M/s TDI Infrastructure Ltd. and Complaint No. 113, tilted as 'Madhu Sareen v. BPTP Ltd. For the relevant purposes the aforesaid orders to be considered as part of this order.

8. The Authority taking strict view of the above, decided to issue a show cause notice to Respondent under section 59(1) of the RERA Act, 2016 for non-registration of the entire project under section 3 of the Act above

9. The Authority heard the arguments of both the parties and observed that in the given circumstances the letter dated 15.03.2012 was absolutely vague, inconclusive, illegal, arbitrary and lacked the minimum requirements of a notice in the eyes of law. Since the aforesaid letter prima facie does not convey to the other party the exact amount or liability that is to be discharged by the complainant. It is further observed that the respondent kept complainant's money for the entire period of time after having received the admitted sum of money, even after the cancellation of booking, did not care to return the paid sum responsibly after reasonable deductions, if any. It is therefore, pertinent that the respondent has gained undue advantage of the sum paid for no justifiable cause. The Authority therefore directs the respondent to refund the amount of Rs. 4,57,000/- along with interest in accordance with Rule 15 of the Rules, 2017, calculated from the date of cancellation to the date of actual payment.

D.S. Sihag	**Anil Kumar Panwar**	**Rajan Gupta**
Member	**Member**	**Chairman**

I agree with the conclusions arrived at by my learned friends, Hon'ble Members of the Authority, that the respondents shall refund the amount of Rs. 4.57 lacs to the complainants along with interest in accordance with rule 15 of the HRERA Rules, 2017, calculated from the date of cancellation of the apartment upto the date of actual payment. However, I arrive at this conclusion for the following reasons:-

(i) Admittedly the complainants had paid an amount of Rs.2.50 lacs along with the registration form dated 11.8.2011. They had further paid an amount of Rs.2,06,281/- on 7.12.2011. It is apparent from the payment plan annexed by the complainants along with the Annexure P/2 that a specific apartment was indicated as having been allotted to the complainants. Further, the booking done by the complainants was under a construction linked payment plan.

(ii) After payment of initial 10%+10% totalling 20% of the basic sale price of the apartment the respondents demanded further 10% amount from the complainants but the complainants failed to deposit the same following which, the respondents cancelled the allotment vide letter dated 15.3.2012.

(iii) It can be made out from the facts and circumstances stated by both the parties that neither any allotment letter containing detailed terms and conditions of the allotment was communicated nor any agreement was made between them. It was the duty of the respondents to have conveyed detailed terms and conditions and having invited the complainants to execute a builder-buyer agreement. Having not done so the respondents have failed to discharge their sacred duty of apprising the complainants of the detailed terms and conditions of sale of the apartment.

(iv) The respondents should have refunded the money paid by the complainants immediately after cancellation of the allotment after making reasonable deductions to be guided by the terms of the agreement which was never executed.

(v) The complainants were forced to approach the District Consumer Forum for redressal of their grievance. Further, despite lapse of 5 years period the respondents have not shown any inclination to settle the matter amicably nor did they ever offered to refund the money. This amounts to illegal enrichment of the respondents at the cost of the complainants.

2. For the aforesaid reasons I concur with the orders passed by my learned friends that the entire deposited amount by the complainants with the respondents should be refunded along with interest in accordance with Rule 15 of the HRERA Rules. I further order that this refund shall be made within a period of 45 days.

I order accordingly.

(Rajan Gupta)
Chairman