

**HARYANA REAL ESTATE REGULATORY AUTHORITY
PANCHKULA, HARYANA**

Comp No. :

RERA-PKL451/2018

Date : 20.12.2018

No. of Hearing : 3rd

Manoj Suneja

...Complainant

Versus

TDI Infrastructure Pvt. Ltd.

...Respondent

CORAM :

Sh. Rajan Gupta
Sh. Anil Kumar Panwar
Sh. Dilbag Singh Sihag

**Chairman
Member
Member**

APPEARANCE :

Sh. Vivek Sethi & Sh. J.C. Manjhu
Sh. Shobit Phutela

Counsel for Complainant
Counsel for Respondent

Order:

This matter was first taken up on 31.10.2018, when the respondent did not appear on the said date, fresh notice was issued for 04.12.2018. The respondent had already incurred the liability of paying cost of Rs. 31,000/- for having default to file his reply within the time stipulated in the notice. A further cost of Rs. 2000/- payable to complainant and Rs. 5000/- payable to Authority

was imposed on 31.10.2018. Ld. Counsel for respondent on the last date had opposed the imposition of cost on the ground that the respondent had not received the notice. The Authority observed that the respondent's plea appears to be justified since the respondent company generally appears and files their reply well within the stipulated time, therefore treating this as a singular instance of default, the Authority decides to waive of the cost already imposed in this case.

2. The complainant's case in brief is that he purchased a residential Plot No.L-819 in TDI City, Kundli from subsequent allottee Mr. Mohammad Yusuf on 10.12.2011. This plot has changed three hands since 2005 when it was allotted to Shri Raj Kumar on 31.08.2005. The transfer of the plot in favour of the complainant was confirmed by the respondent in 2011 itself and a revised statement of account was issued on 03.01.2012. The Builder Buyer Agreement was executed on 16.10.2015.

The following payments were made by thse complainant to the respondent/promoter:

S. No	Head	Amount
1.	Amount Paid	Rs. 27,83,629/-
2.	Total Consideration	Rs.23,53,125/- (including BSP, EDC/IDC, Service tax & other charges etc).

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The complainant is aggrieved on the following grounds:

- The complainant has been continuously requesting the respondent for handing over of the possession since almost entire amount of the consideration has already been paid.
- The respondent offered possession to the complainant on 14.01.2017. Along with the offer of possession a final statement of account was also issued in which an amount of Rs.1.35 lakhs was shown to be outstanding against the complainant.
- Further, the area of the plot was unilaterally decreased from 250 sq.yds. about to 240 sq.yds.
- The complainant visited the site in February, 2017 but was shocked to see that the residential plot was not developed at all, there was no numbering and demarcation.
- Further, the roads; electricity; sewerage and water facilities were not developed. Agricultural crops were growing on the plot. The complainant has also alleged that the piece of land inclusive of residential plot in question has not even been transferred to the respondent's company by the original land owner.
- After the visit, the complainant brought all these facts to the notice of the representative of the respondent's company.



Further, despite the representations of the complainant, the respondent sent a letter dated 14.02.2017 to the complainant asking for execution of sale/conveyance deed and for getting the same registered by 31st March, 2017.

- The complainant has also been receiving notices from a maintenance company for payment of maintenance charges. A public notice dated 21.12.2017 has also been issued by the respondent asking the complainant and all other similarly placed persons to come forward for getting the conveyance deed executed.

Learned counsel for the complainant produced photographs of the site in which it was visible that the road has been constructed but the agricultural crops were growing on the land on which the plot in question is situated.

In nutshell, the case of the complainant is that the plot is not developed, infrastructure facilities have not been laid out but the respondents are forcing them to execute conveyance deed. Thus, in order to seek redressal, the complainant has filed the present complaint before this Hon'ble Authority seeking refund of the total amount paid till date i.e. Rs.27,83,629/- along with interest. Besides, the complainant has also sought compensation for mental



& physical harassment and cost of litigation and any other appropriate relief as deemed fit by the Authority.

3. In response to the pleas of the complainant, the respondent has rebutted the complaint on the following grounds:

- The case of the respondents is that this Authority does not have jurisdiction to entertain this complaint because their project has neither been registered nor is register-able with the Authority for the reasoning of having already received Part-Completion Certificate dated 18.11.2013. As per law the projects in respect of which the full or part completion certificates have been received though need not registered with the Authority. Further, in terms of the provisions of Rule 2(o) of the HRERA Rules, 2017, this project cannot be categorized as On-going Project for which also this Authority does not have jurisdiction to entertain this complaint.
- Further, offer of possession has already been made in January, 2017. It was alleged that the complainant is wriggling out of his obligation of taking possession of the plot. The respondent has also alleged that complainant still has to make some payments of the outstanding dues inclusive the dues on account of club membership charges; infrastructure development charges;

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service charges; maintenance and security expenditure and calling charges.

- Learned counsel for the respondent denied the charge that the land in question is undeveloped and agricultural crops are standing on the plot of the complainant. In fact, the plot is ready and even the possession has already been offered to the complainant in Jan, 2017.
 - Another ground for denying the jurisdiction of this Authority as claimed by the respondent is that the nature of the alleged grievance of the complainant is such that the same could be filed only before the Adjudicating Officer u/s 71 of the Act.
 - The respondent also submitted that the Agreement was not one sided and complainant had executed the buyer's agreement without any objection, thus both the parties have to abide by the agreement. The respondent has in a very general term labelled the complaint as false, frivolous and misleading.
4. While deciding these complaints at the outset, Authority will deal with the question of jurisdiction raised by the respondent's counsel. Question on this point is no more res integra because this Authority in **Complaint Case No.144 of 2018 titled as "Sanju Jain Versus TDI Infrastructure Ltd."** has already ruled that the jurisdiction of

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Authority to adjudicate the complaint is not barred in respect of a project which is neither registered nor register-able. So, the Authority now proceeds to dispose of the complaint on merits.

5. Written as well as oral submissions of both the parties have been examined. It is observed and ordered as follows:-

- (i) First of all the respondent has challenged the jurisdiction of this Authority because their project has neither been registered nor is register-able with the Authority for the reason of already having received part completion certificate dated 18.11.2013. This objection is hereby rejected in view of the law laid down by this authority in Complainant case No. 144 of 2018- Sajnu Jain V/s TDI Infrastructure Ltd. The reasoning given in that case is fully applicable on facts of this matter as well.
- (ii) Admittedly, the plot in question was allotted in the year 2005. Even though it changed hands a few times, the builder buyer agreement was executed after an inordinate delay of nearly 10 years on 16.10.2015. This delay was caused despite the fact that almost entire consideration amount inclusive of basic sale price, EDC, IDC and taxes etc. had been paid by the complainant by the year 2006.



Admittedly, the actual offer of possession was made in January, 2017, therefore, the respondents have caused an exceptional delay in handing over the possession of the plot. Regardless of any provision in the agreement, in a plotted colony it is expected that offer of possession shall be made within a period of about 2-3 years. The respondents have no right to demand entire consideration amount 11 years before the actual offer of possession. For having caused such a huge delay the complainants are entitled to compensation as provided for under Rule 15 of the HRERA Rules. Keeping in view the conduct of the respondents, they will ~~be~~ not be entitled to the benefit as ordered by the undersigned in Complaint Case No.49 of 2018- Parkash Chand Arohi Vs Pivotal Infrastructure Pvt. Ltd.

- (iii) The request of the complainant for refund of money cannot be accepted for the reason that the respondents have developed the colony and have obtained a part competition certificate and have offered the possession to the complainants. When the possession is offered, the




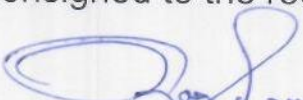
complainant cannot be allowed refund but they shall be entitled to compensation for the period of delay.

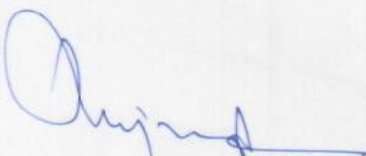
- (iv) It has also been complained that the respondents have charged 18% for the delays caused by the complainants in making payment of some instalments in 2005-2006. The penal interest of 18% for such delays unconscionable. The respondents shall charge @ 9% for the delay caused by the complainants in making payment of the instalments.
- (v) The respondents are hereby directed to prepare a fresh statement of accounts clearly stating therein the amounts to be paid by the complainants to the respondents in accordance with the principles laid down above and also the amount to be paid by the respondents to the complainants by way of compensation for delayed offer of possession. The accounts between the complainant and the respondent shall be settled in accordance with aforesaid principles laid down in this order.

Disposed of. Orders be uploaded on the website of the

Authority and file be consigned to the record room.


Dilbag Singh Sihag
Member


Anil Kumar Panwar
Member


Rajan Gupta
Chairman