



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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BEFORE THE ADJUDICATING OFFICER

COMPLAINT NO. 721 OF 2018

Manju Arya w/o Sh. Suresh Arya, r/o H. No. 218-L, Model Town , Sonipat,
Haryana.

....COMPLAINANT

VERSUS

M/s TDI Infrastructure Ltd., 9, Kasturba Gandhi Marg, New Delhi-110001

....RESPONDENT

Date of Hearing: 25.03.2021

Hearing: 7th (Rehearing)

Present: - Mr. Vikas Deep, Counsel for the complainant through VC.

Mr. Shubhnit Hans, Counsel for the respondent through VC.

ORDER (Dr. Sarita Gupta-Adjudicating Officer)

1. The brief facts culminating into the institution of present complaint are as under:
2. Original allottee had booked one plot measuring 250 sq. yds. by depositing the initial amount of ₹ 1,00,000/- on 19.08.2005 in project "TDI City"

Sarita Gupta

at Kundli, Sonipat, Haryana launched by the respondent. The rate of plot was fixed at ₹ 6150/- per sq. yd. and total consideration of the plot was agreed at ₹ 18,27,250/- including Basic Sale Price (herein after referred as BSP) and all other charges viz. External development charges (herein after referred as EDC), Preferential Location Charges (herein after referred as PLC) etc. Booking rights were purchased by complainant Manju Arya and got the entries transferred in her name. Complainant was allotted Plot No. 658, Block-L having an area of 250 sq. yds. vide Allotment letter dated 10.12.2005. Though there was no development at the site but still complainant kept on paying instalments towards the price of the plot as per demands raised by respondent till 26.12.2006. Complainant had deposited ₹ 13,77,000/- which is 90% of total BSP, ₹ 1,97,500/- on account of EDC which is 100% till May, 2006. Said payment is also reflected in Statement of Accounts dated 31.05.2015.

Initially at the time of booking of the plot, respondent had assured the complainant that possession of the plot will be given within 24 months of the booking after doing all the development work and obtaining completion certificate in respect to the colony. Time was made an essence of the booking.

Thereafter without any account and details, despite depositing 100% EDC, respondent illegally got deposited the amount of ₹ 2,18,125/- on 31.07.2009 under the fear of cancellation and compelling circumstances.

Earlier the complainant had filed Complaint No. 752/2015 before Hon'ble District Consumer Disputes Redressal Forum, New Delhi but the same was dismissed as withdrawn vide order dated 24.11.2017. Thereafter Complaint No. 34/2018 was filed by the complainant before Hon'ble Real Estate Regulatory Authority, Panchkula seeking relief of possession as well as compensation on account of delay. During pendency of that complaint, the letter of offer of possession was issued on 24.05.2018 by the respondent. The said complaint was disposed of by Hon'ble Authority, vide its order dated 24.07.2018, directing the complainant to approach this Court for claiming compensation.

Complainant has stated that the delay in possession has caused loss to her. She is also entitled to enhanced cost of construction. She has suffered the actual loss due to delay in development.

Complainant has sought relief directing the respondent to pay the statutory compensation on amount deposited by her till registration of conveyance deed. The respondent be further directed to pay amount of ₹ 1,80,000/- and ₹ 38,125/- received in excess by the respondent.

3. The respondent filed reply taking preliminary objections regarding maintainability of the complaint as offer of possession was made to the complainant on 24.05.2018, provisions of THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 (herein after referred to

as the RERA Act) are not applicable and Adjudicating Officer has no jurisdiction to deal with the present complaint.

4. On merits, all the averments made by the complainant are denied. It has also been denied that respondent had promised to give possession of the plot within 24 months from the date of booking. The detailed statement of account with respect to Plot No. – 658 has been annexed as Annexure R-2. The respondent has prayed for dismissal of the complaint.

5. To begin with, it has been argued by learned counsel for the complainant that the booking of the plot measuring 250 sq. yds. was taken by the complainant from original allottee after paying an amount of ₹ 1,00,000/- on 19.08.2005 in 'TDI City', Kundli, Sonipat. Out of total sale consideration of ₹ 18,27,250/-, 90% of the amount i.e. ₹ 13,77,000/- was paid by the complainant. Though Builder Buyer Agreement was not executed by the respondent, possession of the plot was agreed to be delivered within 24 months from the date of booking. Since possession was not delivered, complainant was constrained to file complaint before Hon'ble District Consumer Disputes Redressal Forum, New Delhi, which was later on withdrawn after coming into force of the RERA Act, 2016. Later on complaint was filed by the complainant before Hon'ble Haryana Real Estate Regulatory Authority, Panchkula. In that complaint the complainant had sought possession of the plot along with compensation on account of delay in handing over the possession. Since, during the pendency of the complaint, offer

of possession was made on 24.05.2018 by the respondent, the said complaint was disposed by Hon'ble Authority vide its order dated 24.07.2018. The complainant was directed to approach the Court of Adjudicating Officer for claiming compensation. Present complaint was filed before the then Id. Adjudicating Officer on 13.10.2018. Vide order dated 13.12.2018, the present complaint along with two other connected complaints was dismissed by Shri Anil Kumar Panwar, the then Id. Adjudicating Officer. Aggrieved by the said order, the complainant had filed appeal before Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh. Setting aside order dated 13.12.2018, passed by the then Id. Adjudicating Officer, Hon'ble Tribunal has remanded the case for adjudging the compensation by following the procedure as per Rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (herein after to be referred as the Rules) and considering the factors enumerated under section 72 of the RERA Act.

It has been argued by Id. counsel for the complainant that complainant has deposited 90% of the amount till Dec, 2006 and possession was not delivered within agreed period of 2 years and it was only on 24.05.2018 offer of possession was made by the respondent after long span of about 12 years and the conveyance deed was actually executed and registered on 01.08.2019. Since the respondent has utilised the amount of ₹ 13,77,000/- for about 12 years, the complainant be granted compensation on the amount deposited by her till the date

of execution of conveyance deed. Ld. counsel for the complainant has also placed on record statement of account alleging that the respondent has excessively charged ₹ 02,18,125/- on account of external development cost.

6. On the other hand, ld. counsel for the respondent has contended that the relief sought by the complainant i.e. 'statutory compensation' on amount deposited by her till registration of conveyance deed of the plot is not maintainable as interest on amount paid by the complainant is not any kind of compensation but is actually the interest on delay in handing over the possession, which does not fall under jurisdiction of this Court. Moreover, the relief which complainant is seeking i.e. 'statutory compensation' has not been mentioned anywhere in the Real Estate (Regulation And Development) Act, 2016. He has argued that the Adjudicating officer can grant compensation only under section 71 & 72 read with Rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017, which in the present case complainant has not sought in her complaint. He has further argued that complainant has failed to corroborate her plea that respondent had promised to handover the possession of the plot within 2 years, by any documentary evidence. Further complainant has been sleeping over her rights till the year 2015. She had neither made any representation to the respondent nor availed any legal remedy for delay in delivery of the plot till the year 2015, therefore, now the present complaint is time barred. As regards, amount of ₹ 2,18,125/- allegedly received in excess by the

respondent, he submitted that the onus to prove that such amount is received in excess lies on the complainant which she has failed to discharge. The then Id. Adjudicating Officer has rightly dismissed the present complaint vide order dated 13.12.2018.

7. In rebuttal, learned counsel for the complainant has argued that the complainant has discharged her onus to prove that respondent has received ₹ 2,18,125/- in excess from her by attaching Statement of Accounts as Annexure C.

8. Arguments advanced by both learned counsel for the parties have been carefully heard along with meticulous examination of the records of the case.

9. Perusal of file shows that the complainant had purchased booking rights of plot measuring 250 sq. yds. from the original allottee, who had paid ₹ 1,00,000/- on 19.08.2005 out of total sale consideration of ₹ 18,27,250/-. Plot no. L-658 was allotted in the name of the complainant on 10.12.2005. Despite their being no development at the site, the complainant had deposited an amount of ₹ 13,77,000/- up to 26.12.2006 which is 90% of total basic sale price. The complainant had also deposited ₹ 1,97,500/- which is 100% amount of External development cost up to May, 2006. Amount of ₹ 2,18,125/- has been received in excess by the respondent on account of external development charges till date, which is apparent from the statement of account issued by the respondent. Learned counsel for the complainant has also drawn attention of the Court that since the possession of the plot was not delivered to the complainant, the complainant was

constrained to file a complaint case before Hon'ble District Consumer Disputes Redressal Forum, New Delhi, which was later on withdrawn on 24.11.2017. After withdrawal of the complaint from District Consumer Disputes Redressal Forum, New Delhi, Complaint no. 34 of 2018 was filed by the complainant before Hon'ble Real Estate Regulatory Authority, Panchkula in which relief of possession was sought along with compensation for delay in delivery of possession of the plot. It was only during the pendency of that complaint that the offer of possession was given to the complainant on 24.05.2018. After observing that respondent was ready to give possession of the plot to the complainant, Hon'ble Authority while disposing of complaint on 24.07.2018 directed the complainant to approach the Court of Adjudicating Officer for claiming compensation. It has been argued by ld. counsel for the complainant that the complaint which was filed by the complainant before ld. Adjudicating Officer seeking relief of statutory compensation, was wrongly dismissed by the then ld. Adjudicating Officer, on the ground that after execution of conveyance deed, the contract between the parties had come to an end and the complainant is no more entitled to delay compensation. It was also observed that the complainant had not pleaded and proved the date by which conveyance deed was to be executed. In fact, till the date of decision of complaint before ld. Adjudicating Officer, conveyance deed had not been executed. Now, this finding of the then ld. Adjudicating Officer has been set aside by Hon'ble Haryana Real Estate Appellate Tribunal in Appeal no. 272 of 2019 vide order dated 19.01.2021. As matter of record, conveyance deed had been



executed on 01.08.2019, during the pendency of appeal before Hon'ble Tribunal. In Para no. 18 of the said judgement, it has been observed by Hon'ble Tribunal that the execution and registration of conveyance deed will not absolve the promoter of the liability which had accrued before execution and registration of conveyance deed. It has also been observed that the moment the delay has occurred in the delivery of possession, the statutory right to claim compensation had accrued to the complainant which cannot be subsequently extinguished with execution and registration of conveyance deed. In para 20 of said judgment, it has also been observed that provision of section 11 (4) (a) of the RERA Act does not say that the cause of action which had already accrued to the allottee against the promoter due to non-fulfilment of obligations as per agreement for sale, shall stand extinguished with the execution of conveyance deed. Hon'ble Tribunal has also referred to observations of Hon'ble Apex Court in **2020(3) RCR (Civil) 544** titled as **Wg. Cdr. Arifur Rahman Khan and Ors. Vs. DLF Southern Homes Pvt. Ltd. and Ors.**, that the purchasers will not lose their right to claim compensation for delayed handing over of the unit on the ground that possession has been delivered and deed of conveyance had been executed.

10. As per version of the complainant, the possession of the plot was to be delivered within 24 months of the booking after doing all the development work and obtaining completion certificate in respect to the colony. It is averment of the complainant that time was essence of the booking. On the other hand, it has

been denied by the respondent that possession was to be delivered within 24 months from the date of booking. While disposing of complaint on 13.12.2018, the then Id. Adjudicating Officer had observed that the complainant has not attached any document to substantiate her averment that possession was to be delivered within 24 months from the date of booking. Hon'ble Tribunal while dealing with this aspect of matter has observed in para no. 27 of the judgement that the promoter cannot indefinitely defer delivery of possession after receiving substantial sale price. The promoter is duty bound to deliver the possession within reasonable time. After referring to observation of Hon'ble Apex Court in **2018 STPL 4215 SC** titled as **M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr.**, it has been observed by Hon'ble Tribunal that period of 3 years is reasonable time.

11. Record shows that the complainant had purchased booking rights from original allottee, who had booked the plot on 19.08.2005. This date is not disputed by the respondent. Now counting 3 years as reasonable period from the date of booking, respondent was to deliver possession up to 19.08.2008. Record further shows that conveyance deed has been executed on 01.08.2019 i.e. after a delay of around 11 years.

Section 71 (3) of the RERA Act reads as:

“While holding an inquiry the Adjudicating Officer shall have power to summon and enforce the attendance of any

person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the Adjudicating Officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such **compensation or interest**, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.”

While adjudging compensation to be paid to the complainant factors enumerated in section 72 of the RERA Act are to be taken into consideration.

Section 72 of the RERA Act is reproduced as :

“While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:—

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.”

Sd/- Compla

12. As per provision of section 13 of the RERA Act, the promoter / respondent was required to execute written agreement to sell and without execution of written agreement to sell, the promoter cannot take more than 10% of the cost of the plot from the allottee. Admittedly, in the present case, the respondent has not executed written agreement to sell. It is also admitted case of both the parties that up to 26.12.2006, the complainant had paid an amount of ₹ 13,77,000/- which is 90% of the total sale consideration. This is clear violation of section 13 of the RERA Act by the respondent. It is also proved on the record that after taking amount of ₹ 13,77,000/- from the complainant till 26.12.2006, conveyance deed has been executed by the respondent on 01.08.2019 i.e. after a delay of about 13 years. For all these long 13 years the respondent had been utilising the amount of ₹ 13,77,000/- paid by the complainant which can be termed as disproportionate gain to the respondent and loss to the complainant, which can be further termed as a result of default committed by the respondent. After taking reasonable time for execution of sale deed as 3 years from the date of booking, the sale deed was to be executed till the year 2008 which has been in fact executed on 01.08.2019. It can be said to be continuous default on the part of the respondent. It would be in the interest of justice if the compensation to be paid to the complainant is determined after taking into account the default for a number of years i.e. about 11 years and utilisation of the amount paid by the complainant to the respondent starting from 2005 till 2019. The compensation is quantifiable and it would be appropriate if the amount of compensation is calculated at the rate of 6%.

Compensation Calculation

Amount Paid (in ₹) As per statement of Accounts (Annexure-C)	Time period	Rate	Compensation Amount (in ₹)
16,73,500/-	19.08.2008 to 01.08.2019	6 %	1099833/-
2,18,125/-	31.07.2009 to 01.08.2019	6 %	130947/-
Total=18,91,725/-			Total=12,30,780/-

13. Sequel to aforesaid discussion, this complaint is allowed. Respondent is directed to pay an amount of ₹ 12,30,780/- (twelve lakhs thirty thousand seven hundred and eighty) to the complainant in lieu of compensation. The amount shall be paid in two instalments, first instalment of 50% of amount shall be paid within 45 days of uploading of this order and remaining amount to be paid as second instalment within next 45 days.

14. In these terms, the present complaint stands disposed of. File be consigned to record room.

25.03.2021

Sarita Gupta
Dr. Sarita Gupta
[Adjudicating Officer]

Note: This order contains 13 pages. All the pages have been checked and signed by me.

Sarita Gupta
Dr. Sarita Gupta
[Adjudicating Officer]