



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 929 OF 2018

Tilak Raj Wasan

....COMPLAINANT

VERSUS

M/s TDI Infrastructure Ltd.

....RESPONDENTS

& M/s Intime Infrastructure Ltd.

CORAM: Rajan Gupta

Chairman

Anil Kumar Panwar

Member

Dilbag Singh Sihag

Member

Date of Hearing: 07.09.2021

Hearing: 23rd

Present: - Ms. Megha Gupta, Ld. Counsel for the complainant through VC.

Mr. Shubhnit Hans, Ld. Counsel for the respondents through VC.

ORDER (RAJAN GUPTA-CHAIRMAN)

1. This is 23rd hearing of the case. Some of the relevant orders passed by the Authority during the course of hearing of this case are reproduced below:

(A). **3rd hearing dated 22.01.2019**: Both parties had presented their arguments. Since, complainant had already paid substantial amount i.e. 17,74,875 against basic sale price Rs. 19,37,500/- and cancellation of the plot did not appear justified, the respondents had agreed to offer an alternate plot to the complainant because the originally allotted plot no. L-873 was no longer available. Relevant part of order dated 22.01.2019 is reproduced as below:

“ 1.

2. The case of complainant is that the original allottee M/s Shree Ram Foods booked a residential plot no. L-873 measuring 250 sq. yds., in the project named “TDI City” of the respondents in district Sonapat. He paid Rs.3,87,500/- as booking amount on 05.08.2005. An allotment letter was issued in favour of the original allottee on 29.09.2005. The plot was endorsed in favour of the complainant in November,2005. As per the Payment Plan cum revised annexure dated 19.07.2011 the plot was to be handed over by March,2007. Payments were to be made under the Construction linked payment plan.

The complainant has paid Rs.17,74,875/- against the Basic Sale Price of Rs.19,37,500/- till 07.09.2009. Total cost of the plot was Rs.21,35,500/.

The grouse of the complainant is that since he had already made considerable payments to the respondents, he continued to deposit the instalments of Rs.2,18,125/- and Rs.08,27,802/- in September 2009 & July,2011 under duress and even without there being any sign of delivery of possession.

The complainant is further aggrieved on the ground that the respondents returned both the cheques of the complainant and arbitrarily cancelled his plot on 19.10.2011. The complainant sent a request letter dated 16.02.2012 mentioning that he had earlier handed over two cheques to them but the same were returned to him without presenting them. He requested them to accept the payments with interest, but no response was received from the respondents.

As a result the complainant filed a complaint before Hon'ble State Consumer Disputes Redressal Commission, New Delhi for withdrawal of cancellation letter dated 19.10.2011 and handover of the possession of the plot along with interest @18% p.a. The complainant had to withdraw the complaint on account of lack of pecuniary jurisdiction on 03.10.2018.



Now the complainant has filed the present complaint before this Authority seeking possession of the plot along with interest @ 18 % interest p.a.

3. The respondents have denied all the allegations and raised several preliminary objections, as follows:

i) This Authority does not have jurisdiction to entertain this complaint because this project does not require registration as it is covered under license Nos. 718 of 2006. The respondents have been issued a Part Completion Certificate dated 22.09.2017 by the concerned department for 403 acres of the residential plotted colony. Thus it is neither registered nor registerable, the Authority has no jurisdiction to entertain any complaint in this regard.

ii) 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 this Authority does not have jurisdiction to entertain this complaint.

iii) The respondents states that no commitment as alleged by the complainant for delivering the possession by May,2007 was made by the respondent company.

iv) 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.

v) The respondents further states that no cheques as alleged by the complainant were given to them in Sept, 2009 and July,2011. They had received two cheques of Rs.3,87,500/- and Rs.4,40,302/-dated 20.07.2011 and 05.08.2011 from the complainant under protest. Thus due to non-payment of instalments since September,2009 the plot was rightly cancelled on 19.10.2011.They further state that as a gesture of goodwill they can offer alternative plot since the Plot No. L-873 has been transferred to some other person after cancellation.

4. At this stage, the Authority directs the respondents to file an affidavit stating the present status of the Plot No. L-873 and also issue a fresh statement of account to the complainant after recalculating the amounts payable by the complainant. The respondents shall accordingly send a demand letter to the complainant within 5 days of uploading of this order and also file its copy with the Authority before the next date of hearing.”

(B) **5th hearing dated 27.02.2019:** In furtherance of order dated 22.01.2019, respondents filed an affidavit stating that the Plot No. L-873 was



available and they were willing to issue offer of possession for the same. They also filed a fresh statement of account dated 11.02.2019 to the complainants.

Relevant part of the order dated 27.02.2019 is reproduced as below:

“1. Today Proxy counsel for respondents has filed an affidavit by respondents stating that the Plot No. L-873 is available and they have also received the part completion certificate regarding the same. He further states that the respondents are willing to issue offer of possession for the same after the complainant makes payment of outstanding balance due to them. He has also submitted a fresh statement of account to the complainants today in compliance of the order dated 22.01.2019.

2. The complainant seeks adjournment to check the receivables and payable amounts reflected in the said statement. So, the matter is adjourned to 19.03.2019 for final disposal.”

(C). **7th hearing dated 19.03.2019:** Complainant felt aggrieved by certain demands raised by the respondents vide Final Statement of Account dated 11.02.2019. Learned counsel for the complainant challenged demands raised by respondents on account of External Development charges, Enhanced External Development Charges, Club Maintenance Charges, Interest on account of delayed payments and Miscellaneous Expenses. After consideration of arguments advanced by both learned counsel for the parties, the Authority passed following order dated 19.03.2019:

“ i. **Enhanced External development Charges:**

As regards the demand on account of EEDC, the Authority is of considered opinion that since collection of EEDC has been stayed by the Punjab and Haryana High Court, the respondents cannot demand it from the complainant till final disposal of the matter by the Court. However if the amount has already been collected and had been deposited with the department its refund shall be subject to the decision of High Court.



Further, if it has not been deposited with the department, it shall be refunded to the complainant subject to the condition that the complainant shall pay it again if Hon'ble High Court finds this money payable.

ii. **External development Charges:**

External Development charges are the charges paid to the State Government for laying external services of the colony by the State Government agencies. This amount payable to the State Government for whole of the colony is apportioned amongst all the apartments/allottees of the colony. Accordingly, the complainant is liable to pay External Development Charges. In the present case the same has been demanded as per the Schedule II of the Advance Registration Form dated 05.08.2005 and the same has been already deposited by the complainant. The respondents are hereby directed to inform the complainant the total EDC payable for whole of the colony and the method of calculating proportionate share payable by the complainant. The calculation shall clearly demonstrate that EDC charged from him has been correctly worked out and correctly apportioned amongst all the apartments. Discrepancy if any shall be corrected by the respondents.

iii. **Miscellaneous charges:**

The respondents informs that this amount has been charged on account of the fee payable to the advocate for discharging registration formalities etc. In view of the statement made by the complainant that he does not wish to engage any advocate to carry out registration formalities, the Authority hereby, quashes the demand made by the respondents towards "Miscellaneous charges".

iv. **Interest on delay in payment of instalment:**

The complainant is also aggrieved on account of demand of Rs. 10,40,941/- as interest on delay in making payment of due instalments. The Authority has observed in several cases that charging of rate of interest greater than 9 % is arbitrary, unfair and unjustified. Therefore the Authority, directs the respondents to recalculate the amount on this account at the rate of 9% inconsonance with the principles as laid down by Hon'ble Supreme Court.

v. **Club Charges:**

With regard to the club membership charges the complainant states that there is no provision in the builder-buyer agreement specifying any particular amount payable by the complainant as club membership charges in addition to the total sale consideration. When the Authority asked the respondents regarding latest status of the construction and functioning of the club, the respondents sought adjournment to furnish requisite details.



The Authority is of the considered opinion that in case the club is not in existence, the demand on account of club membership charges would not be justified and would accordingly stand quashed. However, if the club is functional the due fee shall be paid by the complainant.”

(D). **16th hearing dated 26.11.2020**: Learned counsel for the complainant stated that complainant was willing to accept possession of the plot subject to its physical verification. The Authority vide order dated 26.11.2020, directed for physical verification of the plot in presence of both the parties. Relevant part of order dated 26.11.2020 is reproduced as below:

- “ 1.
2. Learned counsel for the complainant stated that complainant is also willing to accept the same subject to physical verification of the plot.
3. Respondents shall send the information like location of the site as well as contact details of representative of the respondents who shall be present at the site to facilitate visit of the complainant for physical verification of the plot on 14.12.2020 at 11:00 a.m. by email as well as registered speed post.
4. Respondents shall also file statement of accounts and supply its copy to the complainant by 07.12.2020, reflecting payables and receivables along with the interest payable to the complainant on account of delay in handover of the possession of the plot to the complainant to be calculated till the next date of hearing i.e. 21.01.2021 as per principles laid down by the Authority in in Complaint No.113 of 2018 titled Madhu Sareen V/S BPTP Ltd.”

Due to Kisan Agitation going on/near the project site, the physical verification of the plot was delayed. Physical verification of the said plot was done on 21.03.2021 in presence of both the parties.

(E). **19th hearing dated 25.03.2021**: Learned counsel for complainant alleged that no infrastructural facilities are developed at the site. Allegations



made by complainant's counsel were disputed by counsel for the respondents. The Authority in order to ascertain facts, directed both the parties to file report of physical verification along with photographs of the site. Relevant part of the order dated 25.03.2021 is reproduced below:

“ 1.....

2. Learned counsel for the respondents today stated that physical verification of the plot has been done on 21.03.2021. He further stated that aforesaid documents could not be filed by the respondents in compliance of order dated 21.01.202, since office of the respondent company is being shifted. He sought more time to comply with said order.

3. At this stage, learned counsel for the complainant stated that on physical verification of the plot at site, complainant has found that there is no development at the site and even the basic infrastructural facilities are not available at the site.

Learned counsel for the respondents disputed the allegations made by the complainant's counsel by his averment that the project has already been developed to the extent that Part Completion Certificate has been granted to the respondent by the Department of Town & Country Planning, Haryana on 22.09.2017. On perusal of the record, pleading of learned counsel for the respondent has been found correct as a copy of Part Completion Certificate dated 22.09.2017 is annexed as Annexure-R4.

4. ...Non-execution of Plot Buyer Agreement is an unfair trade practice and such practice must be curbed to bring professionalism in the real estate business. Since extraordinary delay of more than eleven years has already occurred and possession of the plot has not been delivered to the complainant till date ; moreover as per statement of the complainant plot even lacks basic infrastructure, therefore, respondents are liable to pay to the complainant upfront interest accrued in his favour for delay in the handover of possession of the plot till date of Part-Completion Certificate dated 22.09.2017 as per principles laid down by Authority in Complaint No.113 of 2018 titled Madhu Sareen V/S BPTP Ltd. Therefore, in such circumstances, Authority got calculated delay interest from accounts branch of the Authority which comes to Rs. 14,48,223/- and direct the respondent to pay upfront said amount to the complainant before next date of hearing.

5. On request of both parties case is adjourned to 28.04.2021, with direction to both parties to file report of physical verification along with photographs of the site and other reliable documents if any, supporting their claims, at least two weeks before next date of hearing with advance copy to each other in order to ascertain whether possession of the plot is feasible or not. In case, it is found feasible then complainant



will have to take possession immediately but in case, same is found unsuitable for handing over and the complainant insists for possession of the plot then respondent will have to develop infrastructure abutting said plot within a specific time-period as to be determined by the Authority. In latter case, respondent promoter will be further liable to pay interest on account of delay in delivery of possession of plot from 22.09.2017 till complainant is offered possession of the plot along with necessary infrastructure on monthly basis as per Rule 15 of THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016.”

Both parties filed the report of physical verification along with photographs on 09.07.2021 and 13.07.2021 respectively.

(F). **22nd hearing dated 14.07.2021:** After taking into consideration, the factum of grant of Part Completion Certificate dated 22.09.2017 to the project and photographs filed by both parties along with report of physical verification, the Authority held that photographs prima facie reveal that the infrastructural facilities have been duly laid at the site. Relevant part of the order dated 14.07.2021, passed by the Authority is reproduced below:

“1. Learned counsel for the respondent submits that the complainant was shown the allotted plot after its demarcation and in support of his contention, he has placed on record certain photographs. The complainant is visible in these photographs and the place where he is shown standing is stated to be the plot in question. These photographs prima facie reveal that the infrastructural facilities have been duly laid at the site. The respondent has already obtained Part Completion Certificate dated 22.09.2017 which even covers the plot in question. So, the complainant’s contention prima

facie cannot be accepted on the point that the plot is not at a duly developed site.

2. The argument put forth by the complainant’s counsel today is that she has not received the copy of documents/photographs produced



by the respondent and shall be allowed an adjournment to go through the documents and address her arguments on the next date of hearing.

3. In the aforesaid circumstances, the Authority observes that a copy of said documents/photographs be supplied to the complainant's counsel and case is adjourned to 07.09.2021 for arguments on question as to whether or not the plot in question lacks basic infrastructural facilities."

2. Today, learned counsel for the complainant stated that complainant is not willing to take possession of the plot because it is not properly developed as is evident from the photographs filed by her. She further alleges that photographs filed by the respondents does not pertain to complainant's plot. On the other hand learned counsel for the respondents objected to said allegation by pointing out photographs on Page no-5 of the report of physical verification wherein development is visible at the plot site and the complainant himself can be seen standing in blue shirt on his Plot no. L-873.

3. Briefly, facts of the case of the complainant are that the original allottee had booked a plot in the project named "TDI City" of the respondents situated at Sonipat on 05.08.2005. Plot was transferred in favour of complainant in Nov, 2005. Plot No. L-873 measuring 250 yards was allotted to him. No agreement has been executed between the parties till date. Respondents had promised to handover possession of plot to him by March, 2007. He has paid about Rs.17,71,875/- till date against the total cost of Rs. 22,37,125/-.



The grouse of the complainant is that respondents cancelled their allotment of plot vide letter dated 19.10.2011 on account of alleged default in payment of dues. Complainant had filed a complaint before the Hon'ble State Consumer Disputes Redressal Commission, New Delhi which was dismissed on account of lack of jurisdiction.

Complainant is seeking possession of the plot along with interest for delay in handing over the possession. During the course of proceedings before the Authority complainant also raised additional grievances against respondents in respect of demand of External development charges, Enhanced External Development Charges, Club Maintenance Charges, Interest on account of delayed payments and Miscellaneous Expenses.

4. Respondents have denied all allegations raised by the complainant. In their defence, learned counsel for the respondents argued that respondents had to cancel allotment of the said plot because complainant had failed to pay installments after September, 2009. He also submitted that the project in question where the complainant's plot is situated has already been developed and they have already received Part-Completion Certificate from the Department of Town & Country Planning, Haryana on 22.09.2017.

5. After perusal of record and the Photographs attached by both parties along with their physical verification report, Authority holds that since admittedly, Part Completion Certificate has already been granted to



respondents by the concerned department on 22.09.2017 and existence of various infrastructural facilities like roads, electricity, water, sewage connections etc. at plot site are visible in photographs submitted by both the parties, therefore, contention of the complainant that plot is not developed seems incorrect.

The complainant has filed the present complaint seeking the relief of possession of the plot along with interest for delay in handover of the possession. When Authority asked complainant's counsel if complainant want to amend his relief and would like to get refund of amount already paid by him, she stated that complainant is not interested in refund of amount paid by him. In such circumstances, when the plot is developed and respondents have offered possession of the plot to the complainant, complainant should take possession of the said plot.

6. The Plot was booked in August, 2005. Since no agreement was executed between the parties, the plot should have been offered within a reasonable period not beyond three years i.e. by Aug, 2008. Offer of possession along with statement of accounts, however, was issued by respondents on 11.02.2019. Therefore, respondents are liable to handover of possession of the plot along with interest for delay caused in delivery of possession calculated from deemed date of delivery of possession i.e. Aug,



2008 till issuance of offer of possession through statement of accounts dated 11.02.2019.

It is pertinent to mention here that vide its order dated 25.03.2021, the Authority had directed respondents to pay interest for delay in handing over of possession to complainant, from deemed date of delivery of possession till receipt of Part Completion Certificate. The same stands amended. Now, the respondents are directed to handover possession of the plot along with interest for delay caused in delivery of possession, calculated from deemed date of delivery of possession i.e. Aug, 2008 till date of issuance of offer of possession vide statement of accounts dated 11.02.2019.

As per calculations made by the office of Authority, respondents are liable to pay Rs.17,11,954/- as interest on account of delay caused in delivery of possession to the complainant. Hence, respondents are directed to handover possession of the plot to the complainant and make payment of Rs. Rs.17,11,954/- as interest for delay in delivery of possession to the complainant within 90 days of uploading of this order on the website of the Authority. Respondents are also directed to issue fresh statement of accounts showing receivables and payables after duly accounting for the amount payable on account of delay interest of Rs.17,11,954/- .



In case, after handover of possession of the plot, complainant, finds that infrastructural facilities at plot site are deficient, he will be at liberty to approach this Court for appropriate orders as per law.

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]



.....
DILBAG SINGH SIHAG
[MEMBER]