

HARYANA REAL ESTATE REGULATORY AUTHORITY, PANCHKULA

1. Complaint No. RERA-PKL-368 of 2018 (6th Hearing)

Surjeet Singh ...Complainant.

Versus

M/s TDI Infrastructure Limited. ...Respondent.

2. Complaint No. RERA-PKL-1044 of 2018 (2nd Hearing)

Jitendra Arora ...Complainant.

Versus

M/s TDI Infrastructure Limited. ...Respondent.

3. Complaint No. RERA-PKL-1401 of 2018 (2nd Hearing)

Bhawna Kaushik ...Complainant.

Versus

M/s TDI Infrastructure Limited. ...Respondent.

Date of hearing:- 20.02.2019

Coram:-

Shri Anil Kumar Panwar, Member
Shri Dilbag Singh Sihag, Member.

Appearance:-

Sh. Surjeet Singh, Complainant in person in Comp. No. 368/2018
Sh. Jitendra Arora, Complainant in person in Comp. No. 1044/2018
Shri J. C. Manjhu with Vivek Sethi Counsel for Complainant in Comp. No.1401/2018.
Shri Shobit Phutela, Counsel for Respondent in all cases.


ORDER:-

1. All the above captioned cases have been taken up together as the grievances involved therein are similar and against the same project of the respondent. Facts are narrated with reference to **Surjeet Singh vs. TDI Infrastructure Pvt. Ltd Complaint No. 368/2018.**
2. Complainant herein has booked a flat on 05.02.2012 in a project named "Espania Floor (KEF)" Kamaspur, NH-1, situated in Sonipat. The dealer of the respondent informed the complainant that the cheque amounting to Rs. 4.5 lakhs paid towards booking amount was dishonored. As a result the complainant requested for withdrawal from the project but the dealer informed that incase of withdrawal he will have to bear a loss of Rs. 25,000/-, the complainant again issued a demand draft amounting to Rs. 4.5 lakhs in favour of the respondent on 19.03.2012. Said project was launched by respondent and he was allotted a flat No. RF-61/GF measuring 1224 Sq. fts. in the project. Total sale consideration was fixed at Rs. 34,99,084/- which was inclusive of EDC & IDC and the complainant has averred that he has already paid a sum of Rs. 30,00,579/- till 10.02.2016. His grievance is that the respondent in terms of the buyer's agreement entered between the parties on 02.07.2013 was required to deliver the possession of flat allotted to the complainants by Jan, 2016, but the respondent has not yet completed the project and, therefore, they are entitled to get refund of the paid amount along with 24 % interest p.a. he is also aggrieved on the ground that the respondent has charged



interest at the rate of 18% from him on account of delayed payments amounting to Rs.53,900/-.

3. The respondent has not disputed the booking and allotment of flat but has denied the payment of Rs. 30,00,579/- which the complainant is ascertaining the amount already paid by him. According to the respondent, he has paid Rs. 29,46,704/- till date.
4. Today the respondent has filed an affidavit along with the information/documents as directed vide order dated 22.11.2018. The respondent has stated in the affidavit that DTCP, Haryana vide letter dated 19.09.2018 had sought more information regarding his application for grant of Occupation Certificate filed on 31.03.2017 and he is in the process of submitting the relevant information to DTCP, Haryana. He further stated that the construction on site is complete and the offer for fit out possession will be made immediately on the receipt of Occupation Certificate from the concerned department. He also states that all the infrastructural facilities such as roads, electricity, sewerage, drainage and water supply are available at the site and he has even offered fit out possession in complaint No. 1401 of 2018 titled Bhawna Kaushik vs M/s TDI Infrastructure Ltd. Respondent has accordingly prayed that the present complaint is not maintainable because he is ready to offer the possession by July,2019.
5. Learned counsel for the parties have been heard and record has been perused.



7. Evidently, there is no dispute between the parties that buyer's agreement was entered on 02.07.2013 in respect of flat allotted to the complainant. Copy of the said agreement was attached with the complaint and its clause 28 leave no room of doubts for that the respondent was bound to deliver the possession of the flat to the complainants latest by Jan, 2016. The respondent has already applied for grant of Occupation Certificate on 31.03.2017 and is in the process of submitting the additional information to DTCP, Haryana in response to communication sent to him. As per statement made by the respondent today before the Authority, the unit is ready for delivery and offer for fit out possession will be made by July, 2019.

If the respondent delivers the apartment by July, 2019, it will be with a delay of less than three years from the deemed date of handing over the possession. In these circumstances when the project is almost complete and the possession is likely to be offered, even though with some delay. Complainant has chosen to be a part of an under-construction project and some delay in completion of such projects is not unexpected, for which the complainant can be compensated. 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 payable to the complainants for delayed delivery of possession.

Hence, in these circumstances, the Authority directs the respondent to handover the possession of the apartment to the complainant till July, 2019 failing which he shall be entitled to refund of amount deposited by the complainant along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017 i.e. State Bank of India highest marginal cost of lending rate plus two percent.


8. The respondent is directed to calculate and pay the delay compensation to the complainant from the deemed date of delivery of possession till the actual offer of possession, complete in all respects along with occupation certificate. Accordingly the respondent is directed to issue a fresh statement of accounts to the complainant after recalculating the amounts payable by the complainant. Further, the compensation payable to the complainant on account of delayed delivery of possession shall also be shown in the statement of accounts and the net payable /receivable shall be clearly written after accounting for the same. The statement shall be issued by the respondent within a period of 45 days and he shall also periodically apprise the complainant of the stage of construction of the project.


9. The complainant is also aggrieved on account of illegal charging of the rate of interest of 18% p.a. on the delayed payment of instalments amounting to Rs. 53,900/-. The Authority has already observed in several similar cases that



charging of such a huge rate of interest by the respondent is arbitrary, unfair and unjustified and therefore directs the respondent to recalculate the amount at the rate of 9% as held by the Hon'ble Supreme Court.

Disposed of accordingly. The file be consigned to the record room and the orders be uploaded on the website of the Authority.


Dilbag Singh Sihag
Member


Anil Kumar Panwar
Member