

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

Complaint No. RERA-PKL-327 of 2018

Ajay Pal

...Complainant.

Versus

M/s TDI Infrastructure Limited.

...Respondent.

Date of hearing:- 29.01.2019


No. of Hearing: 7th

Coram:- Shri Rajan Gupta, Chairman.
Shri Anil Kumar Panwar, Member
Shri Dilbag Singh Sihag, Member.

Appearance:- Shri Kamal Dahiya Counsel for Complainant.
Shri Shobit Phutela, Counsel for Respondent.

ORDER:-

1. This complaint has already been heard six times. On earlier dates efforts for amicable settlement were also made by the parties, which have failed. The Authority after consideration of oral as well as written submissions made by both the parties, had passed a substantive order on 22.11.2018 and only query left to be answered by the respondent was regarding the status of Occupation Certificate of the project. All previous orders shall be read as part of this final order. After having heard both the parties, matter is finally disposed of today.



2. The case of the complainant is that he booked an flat measuring area 1499 sq. ft., in the project named "Espania Floor (KEF)" Kamaspur, NH-1, situated in Sonipat. He paid Rs. 4,00,000/- as booking amount on 01.10.2011. He was allotted flat no. EF-62/ Duplex in Jan,2012. Flat Buyer Agreement (hereinafter referred to as FBA) was executed between parties on 08.02.2012. Payments were to be made under Construction linked payment plan. As per clause 28 of the FBA delivery of the apartment was to be made within 30 months from the date of execution of FBA. Thus the deemed date of delivery was 08.08.2014.

The complainant had paid about Rs. 31,68,844/- against the Basic Sale Price of Rs. 29,99,994/- till date and the total consideration including EDC/IDC, IFMS, PLC, CMC, etc was Rs.33,91,539/-.

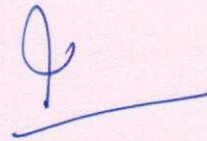
The main grievance of the complainant is that despite payment of about 95% of the total sale consideration, the respondents have failed to deliver the possession of the floor by the due date of delivery as per FBA.

The complainant is also aggrieved on account of car parking space charges levied on him exclusive of basic sale consideration. Now, the complainant has filed the present complaint before this Authority seeking refund of 31,68,844/- along with 18 % interest p.a.

3. The respondent has 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, is covered under license Nos. 1065/1066/1067/1068 of 2006 has not been registered with the Authority, since it is neither registered nor registerable, because it does not fall under the category of On-going Project in terms of the provisions of Rule 2(o) of the HRERA Rules, 2017. Thus, the Authority has no jurisdiction to entertain any complaint in this regard.
- ii. The respondent admits that there was delay in delivery due to pendency of the application for grant of Occupation certificate with the Director, Town & Country Planning department since 12.09.2016. He states that the construction is complete and once OC is granted by the Town & Country Planning Department, the possession of the flat will be offered to the complainant.
- iii. 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.
- iv. The respondent admits the fact that the complainant had paid the claimed amount to them but denies that total consideration is Rs. 33,91,539/- on the plea that as per clause



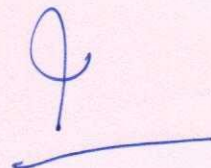
IV of the FBA, the complainant is liable to pay any variation in total sale consideration due to change in EDC/IDC or imposition of or enhancement of any other taxes, charges and/or levies by the state of Haryana or the Central Govt etc in regard to his Flat. Now, the revised total sale consideration is fixed at Rs. 35,04,784/- (i.e. 33,91,539/- plus Rs.1,13,252/).

- v. The respondent also submits that the FBA is not one sided; moreover and complainant had executed the buyer's agreement without any objection, thus both the parties have to abide by the terms and conditions of the agreement. The respondent has in a very general term, labelled the complaint as false, frivolous and misleading.

4. The Authority has considered the written and oral pleadings of both the parties in detail. It observes and orders as follows:-

i. **Jurisdiction:**

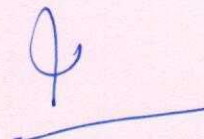
First of all the respondent has challenged the jurisdiction of this Authority for the reasons that the agreement between the parties was executed prior to coming into force of RERA Act. This objection is not sustainable in view of the detailed orders passed by this Authority in **complaint case No.144- Sanju Jain Vs. TDI Infrastructure Ltd.**



The logic and reasoning in that complaint are fully applicable on the facts of this case as well.

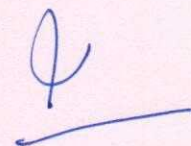
ii. Delay in Offer of possession/ Delivery:

Admittedly, the FBA between the parties was executed on 08.02.2012. As per clause 28 of the Agreement delivery was to be made within 30 months from the date of execution of FBA. So there is no controversy in that regard that as per FBA, the deemed date of possession of the unit was in August,2014. The payments made by the complainant to the respondent are also admitted. The respondent further states that he had applied for OC on 12.09.2016. Thereafter, the department had sought certain more information/documents which he submitted to DTCP, Haryana vide letter dated 05.04.2018. His application was rejected by the department vide order dated 30.05.2018. The respondent has filed an appeal against the said order which is pending before the appellate authority. He states that since all the formalities have already been completed by him, the matter will soon be resolved and he is hopeful that the



Occupation Certificate will be granted soon by the concerned department. The respondent further states that the construction on site is complete and the unit will be handed over to the complainant immediately on the receipt of OC from the concerned department. He has made a statement before the Authority that offer for fit out possession will be made by July, 2019.

If the respondent delivers the flat by July, 2019, it will be with a delay of about 5 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 delay, it does not justify refund of the money paid by the complainant. Complainant has chosen to be a part of this under construction project and some delay in 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

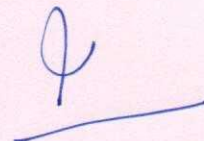


on the issue of compensation for delayed delivery of possession. Further logic and arguments in this regard were given by the dissenting member in **Complaint case No.49 of 2018- Parkash Chand Arohi V/s Pivotal Infrastructures Pvt. Ltd.** It is hereby ordered that the ratio of the said judgements will be fully applicable in this case for determining the quantum of compensation for delayed delivery of possession.

Hence, in these circumstances, the Authority directs the respondent to handover the possession of the flat to the complainant till July, 2019 failing which he shall be entitled to refund of Rs. 31,68,844/- 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.

iii. Car parking Charges:


Another grievance of the complainants that the respondent has charged for car parking space exclusive of basic consideration. After the perusal of the Agreement it is evident that neither there is

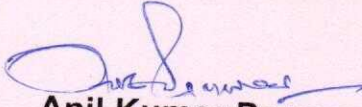


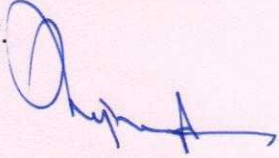
specific provision regarding car parking nor any amount/charges have been quantified for the same, thus in absence of any specific stipulation in the FBA regarding car parking charges, the demand on account of car parking charges is unjustified and is accordingly quashed.

5. The respondent is liable to pay the delay compensation from the deemed date of delivery of possession till the offer of possession, complete in all respects along with occupation certificate is given to him. 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.

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


Rajan Gupta
Chairman