

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

Complaint No. RERA-PKL-598 of 2018

Satya Pal Tyagi

...Complainant.

Versus

M/s TDI Infrastructure Limited.

...Respondent.

Date of hearing:- 29.01.2019

No. of Hearing: 4th

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

Appearance:- Shri J.C. Manjhu and Shri Vivek Sethi, Counsel for
Complainant.
Shri Shobit Phutela, Counsel for Respondent.

ORDER:-

1. This complaint has already been heard three times. On earlier dates efforts for amicable settlement were 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 1390 sq. ft., in the project named "Espania Heights " Kamaspur, NH-1, situated in Sonipat. He paid Rs. 5,00,000/- as booking amount on 30.07.2012. He was allotted flat no. EF-05/0301 on 21.09.2012. Apartment Buyer Agreement (hereinafter referred to as ABA) was executed between parties on 21.09.2012. Payments were to be made under Construction linked payment plan. As per clause 28 of the ABA delivery of the apartment was to be made within 30 months from the date of execution of ABA. Thus the deemed date of delivery was 21.03.2015. The complainant had paid about Rs. 32,01,393/- against the Basic Sale Price of Rs. 25,09,999/- till date and the total consideration including EDC/IDC, IFMS, PLC, CMC, etc. was Rs.31,85,817/-.

The complainant sent a Legal Notice dated 18.05.2018 to respondent requesting him either to make time bound delivery of the floor or refund the entire amount deposited by him with 18% interest p.a. The respondent has not replied to the legal notice till date. The respondent has raised a demand of Rs. 9,45,165/- vide the offer of possession of fit out dated 11.06.2018.

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



The complainant is also aggrieved on account of car parking charges levied on him exclusive of basic sale consideration and non - provisioning of club service in the project. Now, the complainant has filed the present complaint seeking refund of Rs. 32,01,393/- 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 the present complaint in this regard.
- ii. 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.
- iii. The respondent admits the 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. Further the respondent states that an offer of possession for fit out has been made on 11.06.2018. The flat is ready for fitouts and once the occupation certificate is granted by the concerned department, the possession of the flat will be handed over to the complainant.

- iv. The respondent has admitted that payment of Rs. 32,00,849/- by the complainant but states that Rs. 9,63,082/- is still outstanding against the complainant. He also denies total consideration is Rs. 31,85,817/- since as per terms and conditions of ABA, the complainant is liable to pay any variation in total sale consideration.

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. Jurisdiction of Adjudicating Officer:

The second plea of the respondent regarding lack of the jurisdiction is that such complaint could be preferred only before the Adjudicating Officer. This also is completely devoid of merit. The institution of Adjudicating Officer is meant to determine the unliquidated damages arising out of non-performance of full or a part of the contract. The core of the contract falls within the jurisdiction of the Authority only.

iii. Delay in Offer of possession/ Delivery:

Admittedly, the ABA between the parties was executed on 21.09.2012. As per clause 28 of the Agreement delivery was to be made within 30 months from the date of execution of ABA. So there is no controversy in that regard that as per ABA, the deemed date of possession of the unit was in March,2015. 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. He states that the construction on site is complete and the offer for fit out possession has already been made on 11.06.2018 and the unit will be delivered to the complainant after he deposits the balance amount.

In these circumstances, when the project is complete and the possession has already been offered, even though with delay of about four years, 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.

iv. Car parking Charges:

Another grievance of the complainant is 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

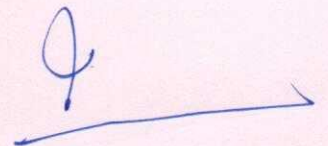


regarding car parking charges, the demand on account of car parking charges is unjustified and is accordingly quashed.

v. Club Membership Charges:

The complainant is also aggrieved on account of club membership charges levied on him by respondent since there is no provision in the builder-buyer agreement specifying a particular amount which is payable by the complainant for club membership exclusive of total sale consideration. Admittedly, the club building is yet to be constructed. When the club is not in existence, the demand on account of club membership charges is unjustified and is accordingly quashed.

5. The respondent is directed to calculate and pay the delay compensation from the deemed date of delivery of possession till the actual offer of possession, complete in all respects along with occupation certificate to the complainant. 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

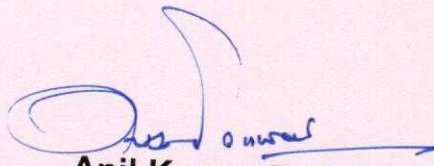


shall also be shown in the statement of accounts and the net payable /receivable shall be clearly written after accounting for the same. The statement shall be issued by the respondent within a period of 45 days and he shall also periodically apprise the complainant of the stage of construction of the project.

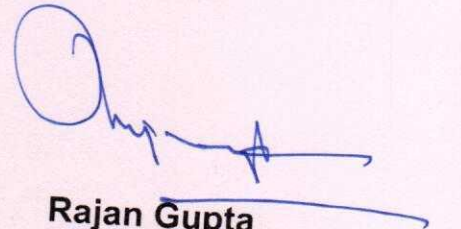
Disposed of accordingly. The file be consigned to the record room and the orders be uploaded on the website of the Authority.



Dilbag Singh Sihag
Member



Anil Kumar Panwar
Member



Rajan Gupta
Chairman