HARYANA REAL ESTATE REGULATORY AUTHROITY, PANCHKULA.

Complaint No. : RERA-PKL-598 of 2019

Madhuri Arya ...Complainant.

Versus

TDI Infrastructure Ltd. ...Respondent.

No. of Hearing: 1st

Date of hearing:- 28.03.2019

CORAM :

Sh. Anil Kumar Panwar **Member**
Sh. Dilbag Singh Sihag **Member**

APPEARANCE :

Himanshu Raj Counsel for Complainant
Shobit Phutela & Shubnit Hans Counsel for Respondent

ORDER:-

1. After having heard both the parties, matter is finally disposed of today.

2. The respondent has already incurred a cost of Rs. 10,000/- on account of 2 days delay in filing of reply. Learned Counsel for respondent makes a request to the Authority to waive of the cost on the ground that

delay was of mere two days owing to certain gap in communication as received from the respondent office. In view of the above request, the Authority waives of the cost.

3. The case of the complainant is that he purchased a floor from Mr. Gurjeet Singh vide an agreement to sell dated 18.10.2010, who had originally booked it, in the project named "TDI Tuscan City" of the respondent, situated in Kundli, Sonipat. The complainant was allotted floor No.T-07/FF measuring area 1164 sq. ft vide allotment letter dated 17.01.2011. The Floor Buyer Agreement (herein after referred to as FBA) was executed on 01.03.2011. The complainant had opted for Construction linked Payment Plan. As per clause 30 of the FBA, the apartment was to be handed over within 30 months from the date of execution of agreement. Thus, the deemed date of delivery was in Aug, 2013.

The Basic sale price of the floor was Rs. 21,50,000/-. The total sale consideration was Rs. 25,01,426/- including EDC, IDC & PLC. The complainant had already paid an amount of Rs.23,41,838/- till April,2015. He entered into a tripartite agreement with Syndicate bank and the respondent on 29.06.2011 for the payment of cost of the floor.

After a delay of more than 4 years from the deemed date of delivery, the respondent issued an offer of possession for fit out of floor on 22.11.2017 along with the final account statement.

The complainant is aggrieved on account of delay in offer of possession of the floor. The complainant is further aggrieved on account of unilateral increase in area of the floor from initial booked area of 1429 sq. fts to 1847 sq. fts (i.e. by 265.00 sq. fts.). He has also challenged additional demands raised by the respondent vide the offer for fit out possession on account of club membership fees, EDC, PLC, SEC, MEA and VAT.

In this background, the complainant has filed this present complaint, seeking delivery of possession of floor along with compensation @ 24% interest for delay in delivery of possession.

4. On the other hand, the respondent has denied all the allegations and raised several preliminary objections as follows:

i. The provisions of Real Estate (Regulation and Development) Act, 2016 are not applicable to the present matter because agreement was executed between the parties prior to the coming into force of the Act, hence the agreements entered into between the parties shall be binding on the parties and cannot be reopened.

ii. This Authority does not have jurisdiction to entertain this complaint because this project, covered under license Nos. 177 of 2007 has not been registered with the Authority, since it is neither registered nor registerable, the Authority has no jurisdiction to entertain any complaint in this regard. 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 also this Authority does not have jurisdiction to entertain this complaint.

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 states that the delivery could not be made with in time stipulated in the FBA, as the application for Occupation certificate was pending with the Director, Town & Country Planning department since 09.05.2014. Further the respondent submits that an offer of possession for fit out has been made on 22.11.2017. The flat is ready for fitouts and the respondent company has already applied for Occupation Certificate. Once the occupation certificate is granted by the concerned department, the possession of the flat will be handed over to the complainant.

v. Other than challenging the jurisdiction, respondent has not submitted any substantial fact to deny the allegations made by the complainant. The respondent has also admitted the payments made by the complainant. However, he states that the complainant is yet to clear his balance of Rs.10,65,254/-.

vi. The respondent states that as per clause 6 and 7 of FBA, the complainant is liable to pay for any variation in change in area as per the sanctioned plan in regard to his floor.

vii. The respondent also states that 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 FBA. The respondent has in a very general term, labelled the complaint as false, frivolous and misleading.

5. The Authority has considered the written and oral pleadings of both the parties in detail and passed following order:-

i. Jurisdiction:

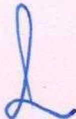
First of all, the respondent has challenged the jurisdiction of this Authority for the reasons that the agreement between the parties was executed prior to coming into force of RERA Act. This objection is not sustainable in view of the detailed orders passed by this Authority in **complaint case No.144- 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 un-liquidated 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 floor-buyer agreement between the parties was executed on 01.03.2011. As per clause 30 of the Agreement, the 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 floor buyer agreement, the deemed date of possession of the unit was on Aug, 2013. The payments made by the complainant to the respondent are also admitted to the extent of Rs. Rs.23,41,838/-. The respondent further states that he had applied for OC on 09.05.2014. He states that since all the formalities have already been



completed by him, the Occupation Certificate will be granted soon by the concerned department, but the respondent has not spelt out any reason for non-issuance of the Occupation Certificate by the concerned department. It appears that he has concealed certain information pertaining to observations/deficiencies pointed out by the Town & Country Planning Department for non-issuance of OC till date. If this would not have been the case, then the OC would have been deemed to be granted due to failure on the part of the concerned department to take appropriate action within 90 days of the receipt of the application for grant of OC.

However, he has made a statement that the construction on site is complete and the offer for fit out possession has already been made on 22.11.2017 and the unit will be delivered to the complainant after he deposits the balance amount.

In the opinion of the Authority, though the offer without receipt of OC is not a valid offer but since the complainant is praying for delivery of possession of his floor along with compensation for delay in delivery of possession, therefore, the respondent is directed to

obtain OC from the concerned department (after removing the deficiencies/ objections if any), and make a valid offer for delivery of possession of the floor after receipt of OC from the concerned department. The respondent is further, directed to calculate and pay 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. 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**. He will follow the majority view as per the dictum in **Madhu Sareen** case subject to its modification if any ordered by the higher court.

iv. **Increase In Area:**

The complainant is also aggrieved on account of unilateral increase in area of the apartment by respondent no.1 from initial booked area of 1164 sq. fts to 1429 sq. fts (i.e. increase of about 174.00 sq. fts.). The Authority by way of a unanimous decision has dealt with this issue in detail in **Complaint case No. 607 of 2018 titled Vivek Kadyan vs. M/s TDI Infrastructure Pvt. Ltd**, the same principle is fully applicable on the facts of this case as well. Hence the respondent shall prepare and issue account statement keeping in the majority view taken in **Complaint No. 113 of 2018 titled " Madhu Sareen vs BPTP Ltd**. For the recalculation of the components of super area as per sanctioned plan and the demand thereof, he shall follow, the criterion laid down in **Complaint case No. 607 of 2018 titled Vivek Kadyan vs. M/s TDI Infrastructure Pvt. Ltd**. In case the complainant is aggrieved by the said demand in any manner, he will have liberty to approach this Authority again.

v. **Club Membership Charges:**

With regard to the club membership charges, there is no provision in the builder-buyer agreement specifying a particular amount which is payable by the complainant for club membership in addition to the total sale consideration. In case, the club is not in existence, the demand on account of club membership charges is unjustified and stands quashed. However, if the club is functional the due fee shall be paid by the complainant.

vi. **External development Charges:**

External Development charges are the charges to be paid to the State Government for laying external services of the colony by the State Government agencies. This amount is payable to the State Government. The Total EDC Charges payable for the whole of the colony is apportioned amongst all the floor/holders of the colony. Accordingly, the complainant is liable to pay External Development Charges. In the present case, the complainant states that amount on account of EDC 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, the method of calculating proportionate share to be paid by the complainant and the pending amount on account of EDC against him. The actual calculation shall show that total EDC charged from him is correctly worked out and correctly apportioned amongst all the apartments.

vii. **Preferential Location Charges:**

After perusal of the record. it is observed by the Authority that the final account statement dated 23.11.2017 reflects the receipt of Rs.64,688/- and a balance of Rs. 24,205/- on account of PLC. It is unequivocally mentioned in clause 4 of the agreement that the complainant had to pay a fixed amount of Rs.64,500/- on account of PLC . Even it is not the case that the floor of the complainant is relocated entitling them to revise the amount on account of PLC. Thus, the additional demand on account of PLC, is unjustified and stands quashed.

entitling them to revise the amount on account of PLC. Thus, the additional demand on account of PLC, is unjustified and stands quashed.

viii. Interest Free Maintenance Security:

Interest Free Maintenance Security is a collective sum of money levied on the allottees of a residential/commercial project by the builder, under a separate account. The money is reserved for the unprecedented or planned future maintenances that might incur in the project like lift failure, park development, security enhancement or any other building maintenance works. The builder will keep the money under their custody, till a RWA (Residential Welfare Association) is formed and accordingly, following which the builder will transfer the account to the association. Therefore, the same is payable by the complainant but the respondent is directed to deposit it in a separate account ad the interest which shall accrue thereon shall be adjusted towards the ultimate liability of cost incurred on account of maintenance services. The liability of individual allottee on a pro rata

ix. Miscellaneous Expenses:

The respondents informs that this amount has been charged on account of fee payable to the advocate to carry out registration formalities etc. In case the complainant does not wish to engage any advocate to complete registration formalities, the charges on account of the same stand quashed.

x. Value Added Tax:

Value Added Tax are the charges to be paid to the State Government. Clause 3 of the agreement provides " the parties agree that the basic sale price of the independent floor shall not include the External Development Charges, Infrastructural Charges, Value Added Tax, Works Contract Tax or such other taxes, levies and /or charges present as well as future along with any enhancements thereof so imposed or levied by the state or any competent authority........". further it reads " The charges towards VAT, WCT or such other taxes that may be demanded by the government have not been quantified as of now, however the purchaser

shall pay the same without any demur or protest as and when the same are demanded by the company."

A plain reading of this clause indicates, that the charges on account of VAT were not quantified at the time of agreement but the same were admitted to be payable by the complainant on demand from the company. Hence, now since the VAT charges have been quantified and demanded by the company vide the final account statement, the same are justified and hence allowed.

6. 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	Anil Kumar Panwar
Member	Member