

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

Complaint No. RERA-PKL-88 of 2019

Sakshi Jain

...Complainant.

Versus

M/s TDI Infrastructure Ltd.

...Respondent

Date of hearing:- 19.03.2019

No. of Hearing : 2nd

CORAM :

Sh. Rajan Gupta
Sh. Anil Kumar Panwar
Sh. Dilbag Singh Sihag

**Chairman
Member
Member**

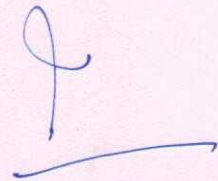
APPEARANCE :

Vikas Deep
Shobit Phutela

Counsel for Complainant
Counsel for Respondent

Order:

1. This is second hearing of the matter. On the first hearing it was adjourned because respondent had not filed his reply. Now, the pleadings are complete, therefore, after hearing both the parties, this matter is finally disposed of today.



2. The case of the complainant is that he booked a residential plot measuring area 250 sq. yds. in the project named "Tuscan Royale-TDI City" of the respondent situated in Kundli, Sonipat on 29.10.2011. He paid Rs. 10,00,000/- as booking amount on 29.10.2011. He was allotted a temporary plot no. Temp/A1-107, vide allotment letter dated 09.04.2013. He states that a demand of Rs.13,43,750/- was raised on 26.11.2013 by the respondent against the cost of the plot. He states that the said demand was unjustified as the respondent was not having mandatory licenses and sanctions from the govt. authorities necessary for development and allotment of the plot. The complainant received a letter dated 20.06.2016 from the respondent whereby he admitted that he was unable to offer the plot in "Tuscan Royale" but an option was given to adjust the amount paid by him towards any alternative plot or any other unit of his choice. The complainant declined the offer of alternative plot/apartment. The complainant has paid Rs. 10,00,000/- till date against the total cost of Rs. Rs. 93,75,000/-.

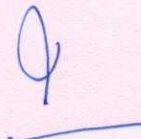
The complainant had filed a complaint before, State Consumer Disputes Redressal Commission, Panchkula, which was later withdrawn vide order dated 21.11.2018 on technical grounds.



The complainant is aggrieved due to non-completion of the project where he had originally booked the plot therefore, he has filed this complaint, seeking refund of the amount paid till date along with interest.

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

- i. This Authority does not have jurisdiction to entertain this complaint because this project was covered under license Nos. 177 of 2007 which 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.
- ii. Another ground for denying the jurisdiction of this Authority as claimed by the respondent no.1 is that the nature of the alleged grievance of the complainant is such that the same could be agitated only before the Adjudicating Officer u/s 71 of the Act.
- iii. The respondent states that allotment of the said plot was only temporary in nature and subject to changes as mentioned in the allotment letter itself. He further states that he has already



received Part Completion Certificate qua the project but could not offer the allotted plot to the complainant due to certain reasons beyond his control. He further states that he has offered the complainant to opt for any alternate plot/unit, which he has declined.

- iv. The respondent states that the complainant defaulted in payment of installments on several occasions despite repeated reminders. He admits that the complainant has paid Rs.10,00,000/- towards the cost of the plot.
4. The Authority has considered the written as well as oral pleadings of both the parties. It observes and orders as follows:-

i. Jurisdiction:

First of all the respondent has challenged the jurisdiction of this Authority for the reason that this project cannot be categorized as On-going Project in terms of the provisions of Rule 2(o) of the HRERA Rules, 2017. This objection is not sustainable in view of the law laid down by this Authority in **complaint case No.144-Sanju Jain Vs. TDI Infrastructure Ltd.** The



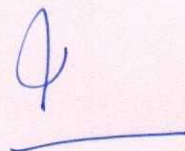
logic and reasoning in that complaint are fully applicable on the facts of this case as well.

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 objection is also 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 to adjudicate upon.

iii. Delay in Offer of possession/ Delivery:

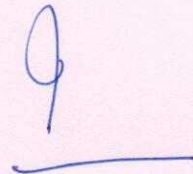
Admittedly, no agreement has been executed between the parties. Evidently, there is no dispute between the parties that till date no offer of delivery of possession qua the plot has been made by the respondent after its allotment in the year 2013, which itself manifest breach of terms of allotment by the respondent. The Authority is of the considered opinion that since the respondent has failed to offer



possession of the allotted plot to the complainant, now after lapse of about more than 8 years from the date of booking it will be unjust, to force the complainant to take the delivery of an alternate plot/unit against his wishes. The respondent has been enjoying usage of the amount deposited by the complainant for the last eight years for no evident justification. In these circumstances, when the respondent is not coming forth with any substantive reason as to why the same plot cannot be offered, the complainant cannot be compelled to accept an alternate plot against his wishes.

Therefore, the Authority finds it to be a fit case for refund and directs the respondents to refund Rs. 10,00,000/- already paid by the complainant along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017.

5. The respondent shall pay the entire amount within 60 days in two instalments of which first instalment will be payable within 30 days and the next within 30 days thereafter. The period of paying such



instalments will start from the day the order is uploaded on the website of the Authority.

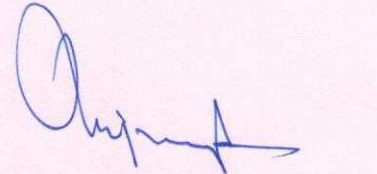
Disposed of accordingly. The file be consigned to the record room and the orders be uploaded on the website of the Authority.



Dilbag Singh Sihag
Member



Anil Kumar Panwar
Member



Rajan Gupta
Chairman