

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

Complaint No. RERA-PKL-361 of 2018

Manoj Kumar

...Complainant.

Versus

1. TDI Infrastructure Pvt. Ltd.
2. Manish Goel & Ashish Goel
3. Vipin Jain

...Respondents

Date of hearing:- 29.01.2019

No. of Hearing : 5th

CORAM :

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

**Chairman
Member
Member**

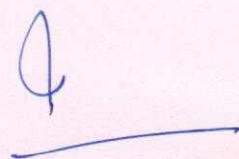
APPEARANCE :

Kamal Dhaiya
Shobit Phutela

Counsel for Complainants
Counsel for Respondent no.1

Order:

1. This complaint has already been heard four times. It was adjourned twice on the request of the respondent no.1 to place on record certain information/documents essential for disposal of the case. Now,



after hearing both the parties, this matter is finally disposed of today. All previous orders shall be read as part of this final order.

2. The case of the complainant is that he booked an apartment measuring area 1224 sq. ft., in the project named "Espania Floor (KEF)" of the respondent no.1 situated in Kamaspur, NH-1, Sonipat on 23.09.2011. He was allotted apartment no. EF-42/GF on 18.01.2012. The Apartment Buyers Agreement (herein after referred to as ABA) was executed on 16.05.2012. The complainant had opted for Construction linked Payment Plan. As per clause 28 of the ABA, the apartment was to be handed over within 30 months from the date of execution of ABA. Thus, the deemed date of delivery was in Nov,2014. The total sale consideration of the apartment was Rs. 29,19,709 including EDC, IDC, IFMS, PLC, CMC, Car Parking, Maintenance Charges. The complainant has paid Rs.29,27,428/- till 03.11.2015.

After a delay of about 4 years from the deemed date of delivery, the respondent no.1 has issued an offer of possession for fit out of unit on 01.06.2018. The complainant is aggrieved due to delay in delivery of the possession of the apartment. He states that respondent no.1 has not even completed the project and is not in a position to handover a duly completed apartment.



The complainant is also aggrieved on account of unilateral increase in area of the apartment from initial booked area of 1224 sq. fts to 1398 sq. fts (i.e. by 174.00 sq. fts.). The complainant states that the respondent no.1 has arbitrarily changed the layout plan without seeking his consent. He has also converted green areas into commercial buildings and has constructed shops on the areas earmarked for Community Centre.

The complainant states that respondent no.2 and respondent no. 3 acted as real estate agents on behalf of respondent no.1 and charged Rs. 1,74,000/-as commission for booking his apartment.

Now, the complainant has filed this complaint, seeking refund of the amount paid till date along with 18 % interest. The complainant is also seeking refund of penal interest charged on account of delayed payments, and also the actual rent paid from Nov, 2014 till date, because he had to rent an accommodation for himself.

3. The respondent no. 1 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 ABA was executed between the parties prior to the coming into force of the

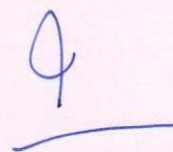


Act, hence the agreements entered into between the parties shall be binding on the parties and cannot be reopened.

- ii. This Authority does not have jurisdiction to entertain this complaint because this project, covered under license Nos. 1065/1066/1067/1068 of 2006 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 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.
- iv. The respondent no.1 denies any knowledge of Rs. 1,74,000/- charged as commission for booking his apartment by his agents.
- v. The respondent no.1 admits the fact that the complainant has paid the Rs.27,53,428/- to them against total consideration of Rs.29,19,709/- (only the basic sale price + present demand of EDC and IDC).



- vi. The respondent no.1 also states that ABA is not one sided. The complainant had executed the buyer's agreement without any objection, thus both the parties have to abide by the terms and conditions of the ABA. The respondent no.1 has in a very general term, labelled the complaint as false, frivolous and misleading.
- vii. The respondent no.1 states that delivery could not be with in time stipulated in the ABA, as the application for Occupation certificate was pending with the Director, Town & Country Planning department since 12.09.2016. Now an offer of possession for fit out has been made on 11.06.2018. 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, possession of the flat will be handed over.
- viii. The respondent no.1 states that as per clause 6 of ABA, the complainant is liable to pay for any variation in change in area due to change of layout plans etc. He further states that layout plans were tentative and are always open till final construction and receipt of Occupation Certificate. The shops are being constructed as per zoning parameters subject to final approval by the concerned department.

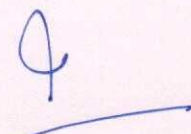


4. The respondent no.1, in view of order dated 22.11.2018 has filed an affidavit toady wherein he has stated that DTCP, Haryana vide letter dated 06.02.2018 had sought some additional information for grant of Occupation Certificate in furtherance of the application dated 12.09.2016. The relevant information was submitted to DTCP, Haryana vide letter dated 05.04.2018 but the DTCP had rejected his application vide order dated 30.05.2018. The respondent no.1 has filed an appeal before the Secretary against the order dated 30.05.2018 passed by DTCP, Haryana. He states that the construction on site is complete and the unit will be handed over to the complainant immediately on the receipt of the Occupation Certificate. He also states that all infrastructural facilities such as roads, electricity, sewerage, drainage and water supply are available on site.

5. 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 reasons that the agreement between the parties was

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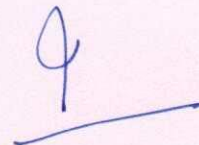
executed prior to coming into force of RERA Act. This objection is not sustainable in view of the law laid down by this Authority in **complaint case No.144- Sanju Jain Vs. TDI Infrastructure Ltd.** The logic and reasoning in that complaint are fully applicable on the facts of this case as well.

ii. Jurisdiction of Adjudicating Officer:

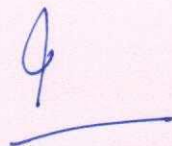
The second plea of the respondent regarding lack of the jurisdiction is that such complaint could be preferred only before the Adjudicating Officer. This objection is also completely devoid of merit. The institution of Adjudicating Officer is meant to determine the un-liquidated damages arising out of 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, the floor-buyer agreement between the parties was executed on 16.05.2012. As per clause 28 of the Agreement the delivery was to be

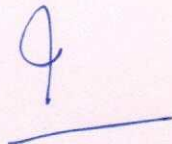


made within 30 months from the date of execution of ABA. Therefore, there is no controversy that as per floor buyer agreement the deemed date of possession of the unit was in Nov,2014. The payments made by the complainant to the respondent no.1 are also admitted to the extent of Rs. Rs.27,53,428/-. The respondent no.1 further states that he had applied for OC on 12.09.2016. Thereafter, the department had sought certain additional information/documents which he submitted to DTCP, Haryana vide letter dated 05.04.2018. His application however, was rejected by the department vide order dated 30.05.2018. He 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 has made a statement that the construction on site is complete and the offer for fit out possession has already been made on 01.06.2018



and the unit will be delivered to the complainant after receipt of OC from the concerned department and payment of balance amount by the complainant.

In these circumstances when the project is almost complete and fit out 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 has a right to 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

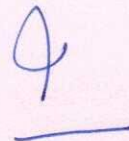


will be fully applicable in this case for determining the quantum of compensation for delayed delivery of possession.

iv. Change in Layout Plan:

Another grievance of the complainants that the respondent no.1 has arbitrarily changed the layout plans without seeking consent of the allottees including the complainant. He has converted green areas into commercial buildings and also constructed shops on the area earmarked for Community Centre.

On perusal of the record it is observed that this grievance of the complainant is misconceived since the area shown in green colour in the marketing plan is earmarked for further expansion, implying thereby that it was not meant for park or green spaces as contended by the complainant. Accordingly, it is observed that respondent has not violated the approved layout plans. The colony has been developed as per approved plans. As regards construction of shops on the area earmarked for Community Centre, the respondent no.1 states that



construction of the shops have been done as per plans sanctioned by the state government. Further, construction of a few shops at a location different from specified location has been stalled till an approval is received from the concerned department. The respondent no.1 undertakes that if the department concerned refuses to approve construction of shops at the changed location, he will demolish them.

In view of the above submissions, the Authority decides that the construction carried out by the respondent no.1 as per approved layout plan is valid, and the grievance of the complainant in this regard is unfounded.

v. 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 1224 sq. fts to 1398 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 the **Complaint case No.**




607 of 2018 titled **Vivek Kadyan vs. M/s TDI Infrastructure Pvt. Ltd.** The principle laid down in the said complaint shall be applicable in this case as well.

Accordingly, on the basis of the said principles, 90 Sq. ft. area shall be deducted from the 1398 sq. ft. super area charged by the respondent. The respondent accordingly shall charge the complainant for only $1398 (-) 90 = 1308$ sq. ft super area.

vi. Amount charged by Commission Agent:

The complainant has inter-alia alleged that he has paid an amount of Rs.1,74,000/- in cash to the respondent No.3 who is an agent of the respondent. The respondent however has denied receipt of any such amount. The complainant supports his claim by a receipt, a copy of which has been annexed as Annexure C/3. A perusal of the Annexure C/3 reveals that it is a receipt of Rs.74,000/- only and not Rs.1,74,000/-. One of the recitals in the receipt however, reads that "total sale price of the said plot has



Rs.8,00,000/- totalling Rs.9,74,000/-. Receipts in respect of Rs.5,00,000/- and Rs.3,00,000/- have been annexed. Accordingly the total receipts annexed by the complainant are in respect of total payment of Rs.8,74,000/-.


From the circumstances, it appears that said amount of Rs.8,00,000/-were actually received by the respondent no.1, and the same has been admitted by him, Rs.74,000/-was taken by an agent which has not been credited into the accounts of the respondent no.1. The complainant will have to adduce some evidence to show that the said amount of Rs.74,000/-was actually paid to the respondent no.1. In the absence of any evidence having been brought before the Authority, at this stage it is not possible to credit this amount towards the complainant. This issue at this stage is kept open. The complainant may produce further evidence to show that he has actually paid the claimed amount of Rs.1,74,000/- and that money has actually flowed to respondent no.1. For getting appropriate orders in this


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regard, the complainant shall be free to file a fresh complaint.

6. Now, the respondent is directed to calculate and pay delay compensation from the deemed date of delivery of possession till actual offer of possession after obtaining Occupation Certificate to the complainant. The respondent no.1 is directed to issue a fresh statement of accounts to the complainant after recalculating the amounts payable by the complainant, and compensation payable to the complainant in accordance with aforesaid principles. The net payable /receivable shall be clearly communicated after accounting for each item. The accounts statement shall be issued by the respondent within a period of 45 days. Respondent no.1 shall also periodically apprise the complainant of the stage of construction of the project and the status of the application for obtaining Occupation Certificate.

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