



Complaint No. 1270 Of 2021

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1270 OF 2021

Smt. Sushma

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 23.02.2022

Hearing: 2nd

Present: - Mr. Vikas Deep, Ld. Counsel for the complainant through VC.
Mr. Shubhnit Hans, Ld. Counsel for the respondent through VC.

ORDER (RAJAN GUPTA-CHAIRMAN)

1. At the outset, learned counsel for complainant stated that original allottee had booked the plot on 16.05.2005 in the project named 'TDI City', of the respondent situated at Kundli, Sonapat. Plot No.-383, Block-K measuring 250

sq. yds. was allotted to complainant on 20.02.2006. The plot was transferred in joint name of complainant and her husband on 13.11.2009. Complainant has paid about Rs.16,51,000/- till date against basic sale price of Rs. 13,50,000/-. No builder buyer agreement has been executed between the parties. In certain similar cases respondent had assured allottees to deliver possession of plots within three years from the date of booking. After taking entire consideration amount, three year period for delivery of possession is quite reasonable. Thus, even in the present case since no agreement has been executed by the respondent, therefore, the deemed date of delivery of plot should be taken as three years from the date of booking, meaning thereby that complainant's plot should have been delivered to complainant by May,2008.

Learned counsel for the complainant further stated that officials of respondent company had verbally informed the complainant that possession of originally allotted plot cannot be handed over to the complainant due to some dispute over the land of the plot.

Complainant is aggrieved by the fact that even after lapse of about seventeen years from the date of booking, respondent has failed to deliver possession of plot to the complainant. Therefore, she is seeking possession along with interest on account of delay in offer of possession till actual delivery of possession to her.



2. Leaned counsel for the respondent has disputed the allegations made by complainant on the ground that project has already been developed to the extent that Part Completion Certificate was granted by the Department of Town & Country Planning, Haryana on 23.01.2008, 18.11.2013 and 22.09.2017.

Learned counsel for respondent, however, admitted that original plot is not available due to unavoidable circumstances of dispute with landowners, and they are willing to offer an alternative plot. Respondent has stated in his reply that vide letter dated 19.03.2019, he had informed the complainant that respondent was unable to deliver her the originally allotted plot. Vide said letter respondent had invited complainant to visit his office to choose any alternate plot in the same or other project but the complainant did not come forward to avail of the options offered to her. Ld. Counsel for respondent stated that respondent is still willing to allot an alternate plot to the complainant and complainant may visit respondent office to choose alternate plot of her choice.

3. After hearing arguments of both the parties and perusal of record, Authority observes that admittedly respondent is unable to deliver originally allotted plot to the complainant due to unavoidable reasons as per letter dated 19.03.2019. Complainant has accepted in her complaint that she was informed about dispute pending over the land on which her originally allotted Plot No. K-383 is situated. Therefore, said plot is not in the possession of respondent due to which respondent company is unable to handover the possession to the



complainant. Therefore, in alternative, respondent has offered the complainant to choose alternate plot vide letter dated 19.03.2019. In such circumstances, complainant can either opt to take possession of another similarly situated alternate plot of her choice or withdraw from the project by taking refund of the amount paid by her along with interest. Relief of possession of particular allotted plot is not possible to be granted to complainant as the plot is not in possession of the respondent due to ongoing dispute over land on which said plot is situated.

4. At this stage, learned counsel for the complainant stated that complainant is interested in taking delivery of possession of an alternate plot near to the originally allotted plot in the same project along with interest on account of delay in delivery of possession till actual handover of the plot.

5. Since, complainant is ready to accept an alternate plot near the originally allotted plot in the same project, therefore, respondent shall invite the complainant by way of a letter to visit their office within next 30 days to choose an alternate plot. Respondent is also directed to place before the complainant the layout plan of the whole project demonstrating similarly situated alternate plots available for allotment in the same project. Complainant shall have the option to choose any suitable plot out of the available plots and take possession of the same. Respondent shall deliver possession of opted alternate plot to the complainant. Respondent shall also issue statement of accounts showing payables and

9

receivables along with said delivery of the plot as per principles laid down by the Authority in this order.

In addition, since respondent has failed to deliver originally allotted plot, nor has reached settlement for delivery of alternate plot till date therefore, respondent is liable to pay interest for delay in delivery of possession of plot along with interest as per Rule 15 of HRERA Rules from the deemed date of delivery till actual offer of possession of the plot accepted for allotment by the complainant. Since respondent had failed to execute agreement with the complainant, therefore, considering three years from date of booking as reasonable time, 16.05.2008 shall be taken as deemed date of delivery for the purposes of calculation of delay interest.

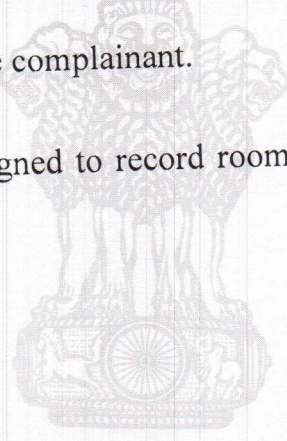
6. Admittedly, complainant has paid total amount of Rs 16,51,000/- which includes an amount of Rs. 1,97,500/- towards EDC. The amount of EDC was collected by the promoter for onward payment to the department/authorities entitled to receive it for carrying their statutory obligations. If a builder does not pass on this amount to the concerned department, then interest becomes payable to the department or authority concerned and the defaulting builder in such eventuality will himself be liable to bear the burden of interest. A builder will be therefore not liable to pay delay interest to the allottee on the amounts collected for passing over to other department/authorities concerned. Delay interest

4

accordingly deserves to be calculated only on amount of Rs 14,53,500/- (Rs 16,51,000/- – Rs. 1,97,500/-).

As per calculations made by Accounts Branch, amount payable by the respondent to the complainant on account of interest for delay in handover of possession of the plot up to the date of passing of this order has been worked out to Rs. 17,71,086/-. The Authority orders that upfront payment of Rs.17,71,086/- will be made to complainant on account of delay caused in offering possession within 90 days. Further, if more than thirty days are taken in offering possession to the complainant, a further interest at the same rate i.e. 9.30 percent shall be paid by the respondent to the complainant.

Disposed off. File be consigned to record room and order be uploaded on the website of the Authority.



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RAJANGUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]