



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2658 OF 2019

Smt. Shilpa Gupta

....COMPLAINANT/S

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT/S

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 17.05.2022

Hearing: 4th

Present: - Mr. Varun Gupta, Ld. Counsel for the complainant through VC.
Mr. Shubhnit Hans, Ld. Counsel for the respondent through VC.
Mr. Ishwar Singh, Ld. Counsel for the respondent.

ORDER (RAJAN GUPTA-CHAIRMAN)

1. Facts of the case of the complainant are that complainant had booked a flat in the project named "ESPANIA FLOORS" of the respondent situated at Sonipat in October, 2011. Flat no. EF-42/TF, measuring 1224 sq. fts.

was allotted to complainant on 23.01.2012. Builder Buyer Agreement (hereinafter referred to as BBA) was executed between parties on 04.02.2012. As per BBA, delivery of the flat was to be made within 30 months from the date of execution of the agreement. Thus, flat was agreed to be delivered by 04.08.2014. Complainant has paid Rs.26,77,515/- till date against total sale consideration of Rs. 22,69,709/-.

Learned counsel for the complainant further stated that respondent has offered him fit out possession of the flat on 01.06.2018 sans Occupation Certificate. Said offer has been made after delay of about four years from the due date of delivery accompanied with an unreasonable additional demand of Rs. 6,77,682/-. Learned counsel for the complainant also apprised the Court that on account of delay caused by respondent in delivery of flat, complainant has bought another flat in Jindal Global City situated at Sonapat. Complainant has availed loan of Rs. 42,75,836/- from Axis Bank to meet sale consideration of said flat in Jindal Global City and has to make repayment of said loan amount to the bank. Therefore, now she no longer needs the present flat in 'Espania Floors'. Thus, since purpose of contract has been frustrated complainant may be allowed refund of Rs. 26,77,515/- along with interest as per Rule 15 of the HRERA, Rules 2017. Complainant has sent copy of sale deed of said flat in Jindal Global City along with loan agreement with Axis bank via email today. Same is taken on record.



2. Learned counsel for the respondent has filed reply today. Same is taken on record. Copy be supplied to complainant. Learned counsel for the respondent has apprised the Authority that they had filed an application for grant of occupation certificate on 12.09.2016 but the same was dismissed by Director, Town & Country Planning Department, Haryana vide order dated 30.05.2018. Further an appeal was filed by the respondent against said order but the same was dismissed on 26.09.2019 on account of non-prosecution. Presently, a fresh application for grant of Occupation Certificate has been filed on 17.02.2022 before Town & Country Planning Department, Haryana. Respondent had offered fit out possession of the said flat to the complainant on 01.06.2018 but due to non-receipt of Occupation Certificate, presently they are unable to deliver unit to the complainant.

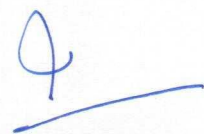
3. After hearing both parties and perusal of records of the case, Authority observes that on account of failure on part of respondent to deliver allotted flat in agreed time, complainant has bought another flat in Jindal Global City situated at Sonapat. She has sent a copy of sale deed of said flat along with copy of loan agreement with Axis bank via email today which corroborates her statement. Thus, the very purpose of contract with the respondent for buying the flat has got totally frustrated. Further, she is also under an obligation to repay the loan amount of Rs. 42,75,836/- which she had availed from Axis Bank to meet

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sale consideration of said flat in Jindal Global City. Therefore, in these circumstances, she no longer needs the present flat in 'Espania Floors'.

Furthermore, respondent has utterly failed to perform his contractual liabilities. The offer for fit out possession dated 01.06.2018 sent by respondent is sans Occupation Certificate, therefore, it could not be termed a proper and legal offer of possession. On account of rejection of their application firstly by Director, Town & Country Planning Department and thereafter by Principal Secretary, Town & Country Planning Department Haryana, such conclusion becomes all the more irresistible. Due date of delivery of apartment was in the year 2014. Now, an extraordinary delay of over eight years has already been caused. Even now fate of the project is uncertain. This extraordinary delay itself is a justification for allowing refund as demanded by complainant. In such scenario, complainant is entitled to refund of Rs. 26,77,515/- along with interest as per Rule 15 of the HRERA, Rules 2017. Therefore, Authority finds it to be a fit case for allowing refund of the amount paid by the complainant and directs the respondent to refund Rs. 26,77,515/- paid by the complainant along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017 from the date of making payments up to the date of passing of this order.

4. As per calculations made by Accounts Branch, amount payable by the respondent to the complainant along with interest has been worked out to Rs.




47,33,922/- (Rs. 26,77,515/- + Rs. 20,56,407/-). Therefore, Authority directs the respondent to refund Rs. 47,33,922/-.

5. The respondent shall pay the entire amount to the complainant within 90 days of uploading this order on the web portal of the Authority.

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




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RAJAN GUPTA
[CHAIRMAN]


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DILBAG SINGH SIHAG
[MEMBER]