



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 755 OF 2021

Sh Amit Agarwal

...COMPLAINANT

VERSUS

M/s TDI Infrastructure Ltd.

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 17.05.2022

Hearing: 8th

Present: - Mr. Subhash C. Jindal, 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. Case of the complainant is that original allottee had booked a plot in the project named "TDI City" of the respondent situated at Sonapat on 28.10.2005. Plot was transferred in favour of complainant on 01.03.2008. Complainant was allotted Plot No. J-220 measuring 350 sq.yds. in 2008. No

Builder Buyer Agreement (hereinafter referred to as BBA) was executed between 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, delivery of possession should be given within reasonable period of time which in such cases is three years. Thus, learned counsel for complainant pleaded that 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 him by 28.10.2008. Complainant has paid Rs. 32,53,812/- against total sale consideration of Rs. 32,36,187/-.

Grouse of the complainant is that despite lapse of about seventeen years from the date of booking, respondent has failed to deliver possession of plot to the complainant. Further, respondent vide its letter dated 05.06.2018 has admitted that original plot is not available due to unavoidable reasons and they are willing to offer an alternative plot to the complainant. Thus, respondent has failed to perform his obligation to deliver possession of the original plot to complainant. Complainant does not wish to take delivery of any alternate plot. Therefore, complainant is seeking refund of Rs. 32,53,812/- along with interest as per Rule 15 of the HRERA, Rules 2017.



2. Learned counsel for respondent stated that though the project has already been developed and Part Completion Certificate has been granted by the Department of Town & Country Planning, Haryana on 23.01.2008, 18.11.2013 and 22.09.2017, however, the plot originally allotted to complainant is not available due to unavoidable circumstances. Respondent vide its letter dated 05.06.2018 had informed the complainant that he was unable to deliver originally allotted plot to him and they are willing to offer an alternative plot to the complainant. Vide said letter respondent had invited complainant to visit his office to choose any alternate plot in the same or other project of the respondent but complainant did not come forward to avail of the options offered to him. Therefore, interest on amount paid by the complainant deserves to be calculated only till 05.06.2018 i.e. the date respondent had invited complainant to choose alternate plot.

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 as per letter dated 05.06.2018. In alternative, respondent has offered the complainant to choose another plot. In such circumstances, complainant could either opt to take possession of another similarly situated alternate plot of his choice or withdraw from the project by taking refund of the amount paid by him along with interest. Relief of possession of particular allotted plot is not possible to be granted to



complainant as respondent is not in a position to deliver originally allotted plot to the complainant.

Complainant does not want to relocate to alternate plot. Alternate plot can be offered only with express consent of the allottee. Authority cannot force an allottee to accept alternate plot when originally booked plot cannot be delivered. In such circumstances, if allottee seeks refund, the same must be granted.

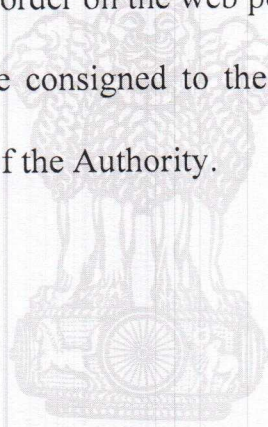
In these circumstances, when respondent is not able to deliver originally allotted plot to the complainant and he has been using the amount deposited by complainant for the last seventeen years without any reasonable justification, the Authority finds it to be a fit case for allowing refund of the amount paid by the complainant and directs the respondent to refund Rs. 32,53,812/- 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. Letter sent by respondent inviting complainant to choose alternative plot implies that respondent has failed to deliver originally allotted plot to the complainant as promised by him. Moreover, it does not obliterate the fact that respondent had received substantial amount from the complainant and had been using it till date without any justifiable reason. Therefore, complainant is entitled to interest on



the amount paid by him from the date of making payments which in the present case is 14.10.2008 till realization of the same.

4. As per calculations made by Accounts Branch, amount payable by the respondent to the complainant along with interest till the date of this order has been worked out to Rs. 78,35,289 /- (Rs. 32,53,812/- + Rs. 45,81,477 /-) till date. Therefore, Authority directs the respondent to refund Rs. 78,35,289 /-.

5. The respondent shall pay 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]