



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1057 OF 2019

Sadhna Gupta

...COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 17.05.2022

Hearing: 8th

Present: - Mr. Savinder Singh Gill, 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 complainant had booked a flat in the project named "TDI Kingsbury" of the respondent situated at Sonapat in August, 2005. Complainant was allotted Flat No. V5-0804, measuring 1625 sq. fts on 18.08 2006. 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 flats 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 flat should be taken as three years from the date of booking, meaning thereby that complainant's flat should have been delivered to her by August, 2008. Complainant has paid Rs. 8,93,750/- till date. No information was given to the complainant regarding total cost of the unit.

Grouse of the complainant is that despite lapse of about seventeen years from the date of booking respondent has failed to deliver possession of flat to the complainant. Further, respondent vide its letter dated 05.08.2011 has admitted that original flat is not available due to unavoidable reasons and they are willing to offer an alternative flat to the complainant. Thus, respondent has failed to perform his obligation to deliver possession of the original flat to complainant. Complainant does not wish to take delivery of any alternate flat. Therefore, complainant is seeking refund of Rs. 8,93,750/- 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 Occupation Certificate has been granted by the



Department of Town & Country Planning, Haryana on 21.04.2010, however, the flat originally allotted to complainant in Tower V5 is not available due to unavoidable circumstances. Respondent vide its letter dated 24.05.2011 and 05.08.2011 had informed the complainant that he was unable to deliver the originally allotted flat to her in Tower V5 as same has not been constructed and they are willing to offer an alternative flat to the complainant in Tower S or W. Vide said letter respondent had invited complainant to visit his office to choose any alternate flat in Tower S or W but complainant did not come forward to avail the options offered to her. Therefore, interest on amount paid by the complainant deserves to be calculated only till 05.08.2011 i.e. the date respondent had invited complainant to choose alternate flat in Tower S or W.

3. After hearing arguments of both the parties and perusal of record, Authority observes that admittedly respondent is unable to deliver originally allotted flat to the complainant in tower V5 as construction of the same has not started as per letter dated 24.05.2011 and 05.08.2011. In alternative, respondent has offered the complainant to choose alternate flat in Tower S or W vide letter dated 05.08.2011. In such circumstances, complainant could either opt to take possession of another similarly situated alternate flat of his choice or withdraw from the project by taking refund of the amount paid by her along with interest. Relief of possession of particular allotted flat is not



possible to be granted to complainant as respondent is not in a position to deliver originally allotted flat to the complainant.

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

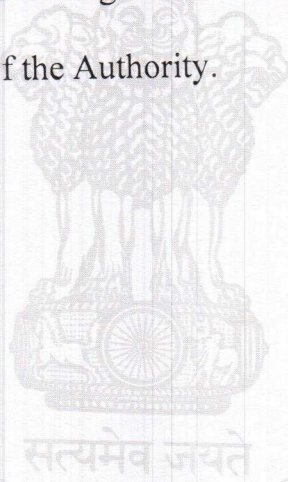
In these circumstances, when respondent is not able to deliver originally allotted flat to the complainant and he has been using the amount deposited by complainant for the last seventeen years without any reasonable justification, Authority finds it to be a fit case for allowing refund of the amount paid by the complainant and directs the respondent to refund Rs. 8,93,750/- 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 flat implies that respondent has failed to deliver originally allotted flat 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 August, 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 date has been worked out to Rs. 22,33,590/- (Rs. 8,93,750/- + Rs. 13,39,840/-) till date. Therefore, Authority directs the respondent to refund Rs. 22,33,590/-.

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]