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HARYANA REAL ESTATE REGULATORY AUTHORITY
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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY		24
Day and Date	Monday and 04.07.2022	
Complaint No.	CR/113/2020 Case titled as ANIL SHARMA Vs TATA HOUSNG DEVELOPMENT COMPANY LTD	
Complainant	ANIL SHARMA	
Represented through	Complainant in person with Shri Amit Kumar Advocate	
Respondent	TATA HOUSNG DEVELOPMENT COMPANY LTD	
Respondent Represented through	Shri Mohit Jolley Advocate	
Last date of hearing	01.06.2022	
Proceeding Recorded by	Naresh Kumari and HR Mehta	
Proceedings The present complaint was filed on 09.01.2020 and the reply on behalf of respondent was received on 05.03.2020 which was addressed to adjudicating officer and was transferred to authority for further proceeding. File was received from Adjudicating Officer on 10.02.2022 in view of the judgment dated 11.11.2021 passed by the Apex Court in case titled as <i>M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors, 2021-2022(1) RCR, 357</i> wherein it was held that the matters regarding refund and interest under sec18(1) are to be decided by the authority and matters regarding adjudging compensation to be decided by the adjudicating officer. Succinct facts of the case as per complaint and annexures are as under:		
S.N.	Particulars	Details

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Act No. 16 of 2016 Passed by the Parliament

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भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



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1.	Name of the project	"Tata Primanti", Sector 72, Gurugram, Haryana	
2.	Project area	36.25 acres	
3.	Nature of the project	Group Housing Colony	
4.	DTCP license no. and validity status	155 of 2008 dated 14.08. 2008 valid upto 14.08.2008	
5.	Name of licensee	Unitech Infratech Pvt. Ltd	
6.	RERA Registered/ not registered	Registered vide no. 98 of 2017 dated 28.08.2017	
7.	Unit no.	3201, Tower/block- 6 (Page no. 54 of reply)	3001, Tower/block-6 (Substituted Unit) (As per written submission of the respondent on page 2)
8.	Unit area admeasuring	Area of 3201, T-6: 4250 sq. ft. (super area) 2419 sq. ft (carpet area) (Page 21 of the Complaint)	Area of 3001, T-6: 4300 sq. ft. (super area) (Page 29 of the Complaint) 2271.15 sq. ft (carpet area) (Annexure-G, page 135 of the Reply to Complaint)
9.	Date of Application Form for Booking	Unit no. 3201, T-6 20.03.2017	Unit no. 3001, T-6 26.03.2018

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10.	Allotment Letter	27.04.2017 (Unit no. 3201, T-6)
11.	Date of Transfer from Unit 3201 to Unit 3001 both in Tower 6	Not mentioned
12.	Date of execution of agreement to sell	24.04.2018 (Not signed) Of unit 3001, Tower/block-6, (As mentioned by the respondent in written submission of facts)
13.	Possession clause	4. "Possession Time and Compensation" Tata Housing shall endeavor to give possession of the apartment to the allottee on or before 30.09.2018 . The date of possession and time schedule of completion shall be subject to force majeure circumstances and reasons beyond the control of the promoter. In case the possession is delayed beyond the agreed date as specified above, the promoter shall be entitled to extension of 12 months for handover of possession and completion of construction . (As per clause 4 of BBA on page 16 and annexure-G on page 54 of Reply)
14.	Total sale consideration	3,84,03,300/- (substituted/transferred apartment) (Annexure E of Application Form at page no. 61 of Reply to the Complaint)
15.	Amount paid by the complainants	Rs.98,56,858/-

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		(As pleaded by the complainant on page 12 of complaint.)
16.	Occupation certificate /Completion certificate	09.03.2018 (As per on page 40 of reply)
17.	Due date of possession	30.09.2018 (As per BBA)
18.	Offer of possession	19.03.18 (3201, T-6) (As per on page 42 of reply)

In the instant case, the Adjudicating Officer vide order dated 08.09.2021 order for appointment of Mr. Dhruv Goyal, Architect as the local commissioner with direction to visit the unit allotted to the complainant in this case i.e., unit No. 3001 Tower-6 Housing Project Tata Primanti located at sector 72 Southern Peripheral Gurugram. The Local Commissioner was further asked to visit the project site and to take measurement of each room space etc. and also the total measurement of unit in question and was also requested to give report if unit at spot is according to said site plan (at page 55 & 56 of the Reply to Complaint) or not. The Local Commissioner visited the said unit on 12.10.2021 and submitted his report to the Adjudicating Officer on 07.11.2021. The Respondent has filed an objection to the Report on 24.06.2022.

The complainants have sought following relief:

1. Direct the respondent to refund the of Rs.98,56,858 amount paid by the complainant to the respondent along with interest.

In the instant case, the complainant-allottee was first allotted unit no. 3201 in Tower-6 and was offered for possession on 19.03.2018. But the allottee requested for transfer of the said unit to new unit no. 3001 in Tower-6 which was complied by the respondent. The payment made for the old unit was then transferred to the new unit. The complainant had paid 25% of the total consideration as stipulated under the payment plan. The rest 75% was to be paid after the offer of possession was made. The complainant, however, when the offer of possession was made for the old unit opted not to pay the remainder amount and rather requested to transfer the unit. Accordingly, the



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deadline for payment of balance consideration for the new unit was set on 28.06.2018 but the respondent allowed the complainant to make payments by March 2019. the complainant requested for further extension vide mails dated 30.11. 2018 and 01.12.2018 and also sought to clarify on transfer of the booked apartment to the third party. The Respondent communicated to the complainant its inability to further gave extension of payment of remaining consideration. The complainant vide email dated 05.12.2018 inquired about charges that would be deducted on cancellation of the unit. From the above mentioned facts, it becomes clear that the complainant has approached this authority with unclean hands. The complainant was unable to arrange money and thus had requested for further extension for payment of the same. The complainant then also inquired about cancellation charges indicating his intent to cancellation. But when the same was rejected by the respondent, it started raising allegations regarding size of the unit. The LC Report submitted to this authority on 07.11.2021 cannot be relied upon as it has not calculated the area of the study when measuring the size of the master bedroom. Thus, the contention of the complainant regarding size of the master bedroom cannot be taken into consideration. Hence, the plea of the complainant seeking refund of the paid-up amount is rejected. However, the complainant is directed to pay the remaining sale consideration and take possession of the unit failing which the respondent can proceed under law.

During course of proceedings, it came to the notice of the Authority that the promoter has violated provisions of section 13 (1) by accepting a sum more than 10 per cent of the cost of the apartment as an advance payment or an application fee from a person without first entering into written agreement for sale with such person and registered the said agreement for sale.

The application for the subject unit i.e. 3201 Tower Block - 6 was made on 20.03.2017 and allotment for the same was issued on 27.04.2017. The payments have been made as per annexure 7 page 30 of the complaint which are as under:-

Date	Details	amount	
26 March 2017	SBI Cheque No.391204	1000000 SBI Account No.32630495216	
31 March 2017	SBI Cheque No.391205	3617526 SBI Account No.32630495216	

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12 April 2017	TDS deposited -Smita	23321 SBI Account No.32630495216
12 April 2017	TDS deposited - Anil	23321 Kotak Account No.02610020001229
11 June 2017	SBI Cheque No.391206	2521008 SBI Account No.32630495216
11 June 2017	Kotak Bank cheque No.0003	2521008 Kotak Account No.02610020001229
11 June 2017	TDS deposited	25465 SBI Account No.32630495216
17 June 2017	TDS deposited - Smita	25210 Kotak Account No.02610020001229
29.March 2017	NEFT transfer	100000 Kotak Account No.02610020001229

The Act of 2016 came into force in its entirety on 01.05.2017 although the Act of 2016 was enacted by the Parliament on 01.05.2016. The promoter has accepted Rs.96,59,542/- by 11.06.2017 against the total unit cost of Rs.3.86 crores, accordingly, the amount accepted before entering into BBA is more than 10% and it is clear violation of Section 13 (1) of the Act, 2016. The counsel for the respondent submitted that the present complaint is not about this unit but a substituted unit on 26.03.2018. The counsel for the respondent was specifically asked whether on June 11,2017 when promoter accepted more than 10% of the amount without entering into BBA about a unit which was later on substituted by another unit but the facts remains the same for violation of section 13 (1) of the Act, 2016. As per counsel for the respondent, a BBA was sent to the complainant on 27.04.2017 and further reminder was sent but BBA could not be signed. The counsel for the respondent was specifically asked whether this obligation of not accepting any advance against that apartment more than 10% without signing BBA and registering it. The respondent has violated provisions of section 13 (1) of the Act, 2016. The counsel for the respondent was specifically asked whether it is on-going project or not. It was agreed that on the date of coming into force of RERA, the said project was on-going project and the provisions of RERA Act are applicable on the respondent. The authority considered the facts and circumstances of the case and also after considering the submissions made by the counsel for the respondent is of the view that the promoter has violated

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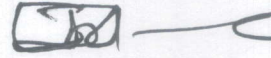
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provisions of Section 13 (1) of the Act and liable to be proceeded against under section 61 of the Act, 2016 and through this order show cause notice is issued as to why a penalty which may extend upto 5% of the estimated cost of the project as determined by the Authority shall not be imposed. The reply, if any, may be submitted within 15 days.

Matter to come up on 01.08.2022 for further proceedings.

V.I-3
Vijay Kumar Goyal
Member


Dr. KK Khandelwal
Chairman
04.07.2022