



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2346 OF 2022

Chand Roop

....COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

CORAM: Dr. Geeta Rathee Singh

Member

Nadim Akhtar

Member

Date of Hearing: 25.04.2023

Hearing: 2nd

Present: - Mr. Gaurav Gupta, Counsel for Complainant,
through VC

Mr. Shubhnit Hans, Counsel for respondent.

ORDER (NADIM AKHTAR- MEMBER)

1. Ld. counsel for complainant submitted that vide an application dated 29.12.2012 complainant had booked a flat in the project of the respondent namely 'Espania Heights' situated at Kamaspur, Sonapat. Vide allotment letter dated 08.11.2012, he was allotted flat bearing no. EH-06/1102 measuring 1075 sq. ft. Apartment buyer agreement was

executed between the complainant and the respondent on 24.11.2012. As per clause 30 of the apartment buyer agreement possession of the flat was to be delivered by 24.05.2015. The total sale price of the flat was ₹ 25,22,665/- against which a total amount of ₹ 13,25,051/- has been paid to the respondent. Respondent has failed to complete the project and deliver possession as per stipulated time despite receiving payments. Complainant had opted for construction linked payment plan, however, respondent failed to inform the status of construction of the project at the time of raising various demands. Construction of the project has not been completed and respondent is yet to obtain occupation certificate. Respondent is not in a position to offer possession of the allotted flat.

2. Further, Ld. counsel of complainant apprised the Authority that the Indian Bank has issued a "Notice for Indented Sale" to the respondent for the project "Espania" i.e the project in concern, as the respondent has failed to repay an amount of ₹ 48,22,00,000/- of the Indian Bank and the bank is intending to sell off the entire project land of 12.64 acres including all the units built by way of auction. It is the apprehension of the complainant that the land over which the unit of the complainant is situated has been declared as a non performing asset by the Indian Bank because of which respondent will not be in a position to deliver possession of the unit. Therefore, learned counsel



for the complainant prayed that respondent be directed to refund the paid amount along with interest.

3. Mr. Shubhnit Hans, learned counsel for the respondent submitted that respondent had filed an application for grant of occupation certificate on 12.09.2016 before the Director, Town & Country Planning Department, Haryana. However, due to unforeseen circumstances, respondent company had again applied for grant of Occupation Certificate before Town & Country Planning Department, Haryana vide letter dated 17.02.2022. Construction of the project has already been completed. He further submitted that the booking/allotment of the complainant was cancelled by the respondent company vide letter dated 22.04.2016 due to non-payment of the outstanding dues by the complainant despite receipt of various reminders, copies of which are annexed as Annexure R-4(colly) at page 27 to 50 of the reply file. However, as a good will gesture, respondent vide letter dated 20.01.2020 offered fit out possession to the complainant but it is the complainant who is at fault by not coming forward to accept possession. Thereafter, respondent issued letters dated 29.10.2021 and 22.03.2022 for cancellation of the allotment of the booking/allotment of the complainant, copies of which are annexed as Annexure R-7 & 8 of reply. Complainant has only paid an amount of ₹ 13,25,051/- against total consideration of ₹ 25,22,665/- out of which last payment was

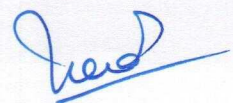


made in January 2014 and thereafter complainant stopped making further payments. As per statement of account dated 23.01.2023 there is an outstanding amount of ₹ 36,16,303/- payable by the complainant to the respondent. In this case, complainant has continuously defaulted in discharging his duties/obligations and thus he is not entitled to any relief.

4. With regard to the "Notice for Intended Sale" of project in question by Indian Bank, learned counsel for the respondent apprised the Authority that the allottees of 'Espania Floors', a part of the Espania project had filed **CWP No. 15082-2022 titled TDI ESPANIA RESIDENTS WELFARE ASSOCIATION vs INDIAN BANK (ALLAHABAD) AND ORS.** before Hon'ble Punjab & Haryana High Court, Chandigarh against sale of aforesaid project property and Hon'ble High Court vide its order dated 02.08.2022 has stayed the e-auction which was to be held on 06.08.2022 and that there will be no further auction till the matter is pending adjudication.
5. At this point learned counsel for the complainant argued that respondent did not send any of the reminder letters to the complainant, which have been annexed by the respondent at Annexure R-4 of the reply, as there is no postal receipt attached with them. He further stated that complainant has stopped making payment due to the reason that said demands were not raised in consonance with the construction

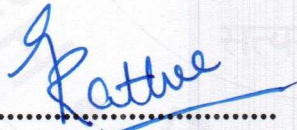
linked plan opted by complainant. In rebuttal, learned counsel for the respondent submitted that postal receipts of the reminder letters are available in record of the company and sought time to furnish the same.

6. After hearing submissions of both parties, Authority observes that last payment of ₹ 1,70,051/- was made by complainant in January 2014 and thereafter respondent had sent various demand letters to complainant but the same were not honoured by complainant without providing a reasonable justification. It is the allegation of the complainant that complainant had opted for a construction linked payment plan and in the demand letters respondent failed to inform the progress of construction work. Moreover, it is submitted by learned counsel for complainant that respondent did not send any reminder letters, which have been annexed by the respondent at Annexure R-4 of the reply, to the complainant. As per version of respondent demand letters were raised in accordance with the progress in construction works and it is the complainant who has continuously defaulted on account of non payment of outstanding dues despite receipt of various demand/reminder letters and offer of possession. In order to properly adjudicate the matter, it is important to ascertain whether the respondent had duly apprised the complainant with regard to the status of construction work at the time of raising various

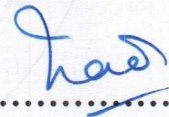


demands and whether the reminder letters annexed as Annexure R-4 of the reply were served upon the complainant or not. Respondent is directed to file documentary evidence to prove the fact that demand raised after January 2014 were in consonance with the construction linked plan opted by complainant and it is the complainant who is at fault by not making payments in terms of proper and legal demand letters issued to him and to file proper postal receipts of the impugned demand letters and reminder letters issued to the complainant before next date of hearing with advance copy supplied to complainant.

7. Adjourned to **02.08.2023**.



.....
DR. GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]