



Complaint no. 91 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 91 OF 2019

Nidhi Jain

....COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

CORAM:

Dr. Geeta Rathee Singh

Member

Nadim Akhtar

Member

Date of Hearing: 15.12.2022

Hearing: 19th Hearing

Present: - Mr. Vikas Deep, Counsel for the complainant.

Mr. Shubhnit Hans, Counsel for the respondent.

ORDER (DR. GEETA RATHEE SINGH- MEMBER)

This matter had come up before Authority on 12.07.2022, whereby after hearing both parties, Authority had passed a detailed order where facts of the case and arguments advanced by both parties were recorded therein. Said order is reproduced below for reference :

“1. This is 17th hearing of the case. Authority had been adjourning this case on request of both parties. They had been seeking repeated adjournments to settle the case but till date no settlement has been effected. Learned counsel for complainant has submitted her

1 *Geeta Rathee*

written arguments. Authority is disposing of the present case on merit on basis of available record.

2. Case of the complainant is that the original allottee booked a plot in August, 2005 on payment of Rs.1,87,500/- booking amount in TDI City, Sonipat. Plot was purchased jointly by subsequent allottees Mr. Ajay Rastogi & Mr. Shalav Rastogi. Plot no.- 786 block 'H' was allotted in their favour vide allotment letter dated 13.02.2006. Plot was purchased by the complainant in August-Sept. 2011. Respondent transferred Plot in her favour on 04.10.2011 after taking forced payments from her against following categories: (a) Maintenance charges Rs. 5785/-, (b) interest delay in payment of installments Rs. 95,077/-, (c) interest on EDC amount Rs. 11,357/-, (d) Transfer charges Rs. 37,664/-, (e) Service charges Rs. 3880/-, (f) Miscellaneous charges Rs. 10,000/-, (g) Interest free maintenance security Rs. 20,000/- etc. No agreement was entered between the parties. Basic sale consideration of the plot was Rs. 15,44,634/-. As per statement of accounts dated 28.01.2019 attached as Annexure-R-4 with reply, respondent has admitted payment of complainant Rs. 21,19,468/- by the complainant.

Thereafter, despite repeated requests by complainant, respondent did not execute conveyance deed since respondent had not received the Completion Certificate at that time.

Complainant is aggrieved on account of Final reminder dated 16.02.2017, whereby respondent asked the complainant to get conveyance deed of the plot executed by 31.03.2017 failing which he would be liable to pay holding charges w.e.f. 01.04.2017. Said letter dated 16.02.2017 also mentioned that complainant was offered possession of her plot on

[Signature]

13.11.2008. Complainant has denied receipt of offer of possession letter dated 13.11.2008. When complainant contacted respondent for execution of conveyance deed, respondent asked her to pay outstanding amount of Rs. 50,000/- for club membership and Rs. 53,200/- for Maintenance charges. Aggrieved on account of said illegal demands by respondent, complainant sent a legal notice dated 27.02.2017 to the respondent seeking refund of amounts charged by respondent at time of transfer of plot and withdrawal of illegal demands for club membership, Miscellaneous charges and Maintenance charges; to pay interest on account of delay in handover of possession of the plot and to execute conveyance deed in her favour. When complainant did not receive any response from the respondent she filed a complaint before District Consumer Disputes Redressal Forum, Sonapat and then before Hon'ble state Consumer Disputes Redressal Commission, Panchkula which were later withdrawn vide order dated 02.11.2017 & 30.10.2018.

Complainant is aggrieved on the ground that the respondent has failed to handover possession of the plot to her. The complainant has prayed for grant of following relief:

- i. refund of Rs. 10,000/- Miscellaneous charges, Rs. 20,000/- on account of Interest free maintenance security, Rs. 36,664/- on account of transfer charges; Rs. 95,077/- interest charged from her;
- ii. to pay interest on account of delay in handover of possession of the plot till the execution of conveyance deed in her favour;
- iii. execution of conveyance deed in her favour;
- iv. to withdraw demand of Rs. 50,000/- towards club membership, Rs. 10,000/-

miscellaneous charges and Rs. 53,200/- as maintenance charges and holding charges;

v. to render account of EDC charges and refund the excess amount charged from her on account of EDC.

3. *In written submissions dated 20.07.2022, learned counsel for the complainant has stated that respondent has failed to prove on record the delivery of letter of offer of possession dated 13.11.2008. Even, respondent has admitted that Part Completion Certificate qua the plot was received on 18.11.2013 which implies that project lacked basic infrastructure and plot was not complete in the year 2008. Thus, in the absence of basic infrastructure project should be deemed to be incomplete and the said offer letter dated 13.11.2008 cannot be held to be legal and lawful offer for possession.*

She has further alleged that even at present the block in which complainant's plot is situated and adjacent blocks are not habitable. She has attached photographs of the site as Annexure A-1 along with written submissions. Further, she has attached office correspondence dated 09.01.2020 and 05.08.2020 as Annexure -A and Annexure-B which were sent by District Town Planner, Sonipat to Director, Department of Town and Country Planning whereby show cause notice was issued to respondent and all his approvals were also kept in abeyance on account of shortcomings in the project. As per Annexure -C site inspection report dated 05.01.2021, District Town Planner, Sonipat had reported that colony has not been properly maintained by the developer and the required basic infrastructure and services are not functional at site which makes it difficult to construct house on plots in Block-G, H, I, J, K and L. Site inspection report dated 21.01.2021 attached as Annexure-D submitted by Committee constituted by DTCP, Haryana also reveals failure on part of promoter

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to develop the colony. Annexure E & F reflect that complainant was refused electricity connection by UHBVN on the ground that promoter has not completed internal infrastructure as per approved electrification plan. Similarly, plight of allottees on account of non-development of the present project was also noted down by Hon'ble NGT, New Delhi in its order dated 15.07.2022 in OA No. 155-2020 titled Dr. Manorama Sharma and Anr. vs TDI Infrastructure Ltd. Said order dated 15.07.2022 is annexed as Annexure -G with written submissions.

Complainant has also objected to levy of non-construction penalty and holding charges on the ground that complainant had not received any such demand letter. Further, respondent cannot levy non-construction penalty and holding charges because he himself has failed to develop the basic infrastructure of the project as is evident from Annexures-C, D, E, F and G.

4. In response, reply of the respondent is that complainant herself had defaulted in payment of instalments due to which offer of possession of the plot was delayed. Learned counsel for respondent stated that plot was offered to the complainant on 13.11.2008. He has further stated that all demands raised by them and paid thereto are correct and legal. Respondent has stated in his reply that Plot of complainant falls under License No. 739-2006 for which they have already received Part Completion Certificate qua plot of complainant on 18.11.2013. Learned counsel for the respondent has stated that complainant is liable to pay Holding charges (w.e.f. 1.04.2017 to 28.01.2019) amounting to Rs. 55,952.92/- as well as Non-Construction Penalty (w.e.f. 13.11.2008 to 28.01.2019) amounting to Rs. 9,03,007/- as reflected in statement of accounts dated 28.01.2019 attached as Annexure R-4 with reply.

5. After hearing both parties and perusal of records of the case, Authority observes that it is evident from Annexures-C, D, E, F and G that basic infrastructure of the project is incomplete. As per Annexure -C site inspection report dated 05.01.2021, District Town Planner, Sonapat colony has not been properly maintained by the developer and the required basic infrastructure and services are not functional at site in Block-G, H, I, J, K and L. Site inspection report dated 21.01.2021 attached as Annexure-D submitted by Committee constituted by DTCP, Haryana also reveals failure on part of promoter to develop the colony. Annexure E & F reflect that complainant was refused electricity connection by UHBVN on the ground that promoter has not completed internal infrastructure as per approved electrification plan. Similarly, Hon'ble NGT, New Delhi in its order dated 15.07.2022 in OA No. 155-2020 titled Dr. Manorama Sharma and Anr. vs TDI Infrastructure Ltd. has confirmed non-existence of basic infrastructure of the project in Annexure -G. Admittedly, Part Completion Certificate qua plot of complainant was received on 18.11.2013. Thus, prima facie, offer letter dated 13.11.2008 which was issued without Part Completion Certificate was not a legal offer. Even, complainant cannot be asked to pay non-construction charges as well as holding charges in such scenarios when respondent has failed to develop basic infrastructure in the project. As per record, no offer has been made after receipt of Part CC in November, 2013. Even it cannot be ascertained from copy of Part Completion Certificate dated 18.11.2013 annexed by respondent with his reply that plot of complainant falls under it. In these circumstances, respondent is granted last opportunity to prove that he has obtained Completion/Part Completion Certificate qua plot of the complainant which shall be reflected in the layout plan with distinct colour differentiation.

All aforesaid information shall be filed within two weeks with an advance copy to the complainant. In case, respondent fails to prove on the next date of hearing that plot of the complainant is developed and basic infrastructure exists at site then Authority may proceed to appoint local Commissioner to ascertain status of existence of basic infrastructural facilities qua the plot of the complainant. Respondent shall pay outstanding cost of Rs. 2,000/- and Rs. 5,000/- to the complainant and the Authority respectively."

2. Today, Mr. Shubhnit Hans, learned counsel for the respondent submitted that the project of the respondent already stands completed and part completion for the same has been received on 18.11.2013, which is annexed as Annexure R-3 of the reply filed. All basic services and amenities have been laid down in the project. It is the complainant who is not coming forward to clear her dues by making payment of outstanding balance consideration.
3. Whereas, learned counsel for the complainant submitted that the project has not been maintained by the respondent and the vicinity of the plot booked by complainant is not habitable.
4. In view of conflicting submissions by of both parties, both parties are directed to conduct a joint visit of the site of the project and the plot in question. Both parties will visit the site on 17.01.2023 and conduct a joint inspection of the area. Report of the site visit along with photographs should be submitted at least 15 days before the next date of hearing.


Ratna

5. Case is adjourned to 14.03.2023 for submission of report of site visit and arguments, if any.



.....
Dr. GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]

