

TDI CITY WELFARE ASSOCIATION v. TDI INFRASTRUCTURE LIMITED

TDI CITY WELFARE ASSOCIATION

...Appellant

TDI INFRASTRUCTURE LIMITED

...Respondent

Case No: CONSUMER CASE NO. 2901 OF 2017

Date of Judgement: 01 November 2023

Judges:

RAM SURAT RAM MAURYA – PRESIDING MEMBER

BHARATKUMAR PANDYA – MEMBER

For Appellant: MR. SACHIN JAIN, MR. SANDEEP SACHIN, MR. SHAMMI JAIN & MS. SHOBHA TEJSWANI, ADVOCATES
MR. SUBHASH GARG, PRESIDENT

For Respondent: MS. KANIKA AGNIHOTRI, MR. SHAURYA PUNJ, MR. SHAURYA ROHIT, ADVOCATES

Facts:

TDI City Welfare Association filed a complaint on behalf of 5 members against TDI Infrastructure Ltd regarding deficiency in service and unfair trade practices in relation to plots booked by the members in TDI City township at Kundli, Haryana. The 5 members are – Dr. Shammi Jain, Ms. Aparna Sharma & Mr. Sandeep Sachin, Mr. Ajay Kumar Gupta & Ms. Poonam Gupta, Ms. Manorama Sharma & Capt. Manoj Abhishek and Ms. Shobha Tejwani. The members booked residential plots of 250-500 sq yards in 2005-2006 by paying almost full price. They were allotted plots in Blocks F, K and L. Conveyance deeds were executed in favor of Ms. Aparna Sharma & Mr. Sandeep Sachin, Ms. Manorama Sharma & Capt. Manoj Abhishek and Ms. Shobha Tejwani. Possession letters were also given. It was alleged that though 11 years have passed, promised

amenities like water, electricity etc. have not been provided in these Blocks. Multiple letters and reminders given but no action taken. Due to delay, construction costs have escalated. Members staying on rent and incurring monthly rental expenses. Complaint sought refund with interest, compensation for construction cost escalation and harassment along with litigation costs.

Court's Opinion:

Complaint by Association on behalf of members is maintainable. Members' grievances need not be identical. Claim of Ms. Aparna Sharma & Mr. Sandeep Sachin and Ms. Manorama Sharma & Capt. Manoj Abhishek is barred by limitation as complaint filed after 2 years of possession. Dr. Shammi Jain and Ms. Shobha Tejwani's claims are within limitation period. They are subsequent purchasers but allotment was in 2006 and 2008. More than 10 years passed but plots not developed. In Blocks H,I,J,K,L amenities have been developed but not in Block F,L where Dr. Shammi Jain and Ms. Shobha Tejwani's plots are located. Homebuyers cannot be made to indefinitely wait for possession and amenities.

Arguments by Parties:

Complainant:

Plots not developed even after 11 years. Basic amenities not provided. Multiple letters and reminders given but no action by OP. Construction costs escalated significantly due to delay. Facing financial issues. Seeking refund with interest, compensation for construction cost escalation, monthly rental expenditure, harassment and litigation costs.

OP:

Some members not original allottees, they purchased in open market. Members invested for commercial purpose. Sale of plots not under Consumer Act. Some members took possession after conveyance deed. Complaint not maintainable. All members booked plots in different blocks at different times. One complaint not maintainable. Amenities have been developed in Blocks F,K,L. Neighbouring plots possession given. EDC are statutory charges. Rates enhanced by Govt. Interest also charged by Govt. No time limit given for possession. No deficiency in service. Global recession affected real estate sector.

Facing decreased demand and cash flows. Disturbances by farmers whose land acquired caused hindrances. Reasons beyond control caused delay.

Referred Sections:

Section 12(1)(a) and 12(1)(b) of Consumer Protection Act 1986 – Complaint can be filed jointly by one or more consumers or consumer association. Section 24A of Consumer Protection Act 1986 – 2 years limitation period. Section 340 of Criminal Procedure Code – Criminal complaint.

Cases Referred/Cited:

- Moulivakkam Trust Heights Flat Affected Buyer’s Association Vs. M/s. Prime Sristi Housing Pvt. Ltd.***
- Brigade Enterprises Vs. Anil Kumar Virmani.***
- Wg. Cdr. Arifur Rehman Vs. DLF Southern Homes.***
- Debashis Sinha Vs. R.N.R. Enterprises.***
- Laureate Buildwell Vs. Charanjeet Singh.***
- Bangalore Devt Auth Vs Syndicate Bank.***
- Fortune Infrastructure Vs. Trevor D’Limba.***
- Pioneer Urban Land & Infrastructure Vs Govindan Raghavan.***
- Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra***

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Court

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Full Text of Judgment:

1. Heard Mr. Sachin Garg, Advocate, for the complainant and Ms. Kanika Agnihotri, Advocate, for the opposite party.

2. TDI City Welfare Association (the complainant) is a voluntary consumer association, registered under Societies Registration Act, 1860, having Registration No. SI 67862 of 2009 dated 23.12.2009. The complainant has filed above complaint, for directing TDI Infrastructure Limited (the OP) to (i) refund entire amount deposited by its members, on whose behalf the complaint was filed, to them, with interest @21% per annum, from the date of respective deposit till the date of refund; (ii) pay Rs.25/- lacs to each of them, as compensation for escalation of cost of construction due to delay; (iii) pay Rs.10/-

lacs to each of them, as compensation for mental agony and harassment; (iv) pay Rs.25000/- per month to each of them, as compensation for rentals incurred by them, from January, 2008; (v) pay Rs.7.5/- lacs, as litigation costs; and (vi) any other relief, which is deemed fit and proper in the facts of the case.

3.The complaint was filed on behalf of (i) Dr. Shammi Jain, (ii) Ms. Aparna Sharma & Sandeep Sachin, (iii) Ajay Kumar Gupta & Ms. Poonam Gupta, (iv) Ms. Manorama Sharma & Capt. Manoj Abhishek, and (v) Ms. Shobha Tejwani. The necessary facts relating to themembers, on whose behalf the complaint has been filed, are as follows:-

(a) M/s. Harsh Industries booked a plot of 250 sq. yards and deposited Rs.187500/- on 20.02.2006 and Rs.590000/- on 29.04.2008. The OP, vide allotment letter dated 31.03.2008, allotted Plot No.76-A (area 250 sq. yards), sale price @Rs.10150/- per sq. yard, Block-F, TDI City to it. M/s. Harsh Industries transferred above plot to Dr. Shammi Jain on 08.09.2008, who deposited Rs.1509500/- on 16.09.2008, Rs.253750/- on 04.12.2008, Rs.253750/- on 09.03.2009 total Rs.2804500/-. Total cost of the plot was Rs.2537500/- + EDC Rs.257000/- + PLC Rs.253750/-. The OP executed a Plot Buyer's Agreement on 11.09.2008, in her favour.

(b) Ms. Aparna Sharma & Sandeep Sachin booked a plot of 350 sq. yards and deposited booking amount of Rs.542500/- on 03.08.2005, Rs.150000/- on 17.12.2005, Rs.150000/- on 17.12.2005, Rs.40375/- on 17.12.2005, Rs.45000/- on 02.01.2006, Rs.160000/- on 11.02.2006, Rs.30000/- on 11.02.2006, Rs.105375/- on 11.02.2006, Rs.125000/- on 12.04.2006, Rs.130000/- on 12.04.2006, Rs.16250/- on 12.04.2006, Rs.138250/- on 06.06.2006, Rs.271250/- on 09.08.2006, Rs.131250/- on 25.10.2006, Rs.140000/- on 25.10.2006, Rs.171250/- on 06.01.2007, Rs.50000/- on 10.02.2007, Rs.50000/- on 10.02.2007, Rs.21250/- on 24.02.2007, Rs.70000/- on 24.02.2007, , Rs.190000/- on 24.02.2007, Rs.10000/- on 24.02.2007 total Rs.3449213/-. Total cost of the plot was Rs.2712500/- + Rs.276500/- EDC. The OP, vide allotment letter dated 28.01.2006, allotted Plot No.581 (area 350 sq. yards), sale price @Rs.7750/- per sq. yard, Block-K, TDI City to them and executed a Plot Buyer's Agreement on 08.04.2008, in their favour. The OP also executed conveyance deed dated 04.06.2015, in their favour of 338.528 sq. yards and handed over possession on 20.06.2015. Since there was no basic

amenities as such they gave legal notice dated 20.06.2016 for demarcation of their plot and provide amenities for construction etc.

(c) M/s. Sujan Builders Limited booked a plot of 500 sq. yards and deposited booking amount of Rs.775000/- on 22.12.2005, who transfer its right to Sneh Lal Garg, who again transferred it to Ajay Kumar Gupta & Ms. Poonam Gupta and the OP, vide allotment letter dated 05.02.2006, allotted Plot No.581 (area 500 sq. yards), sale price @Rs.7750/- per sq.yard, Block-L, TDI City to them. Ajay Kumar Gupta & Ms. Poonam Gupta deposited total Rs.4357476/-. Total cost of the plot was Rs.3974587/- + EDC Rs.1062113/-. The OP, vide letter dated 14.10.2016, offered possession to them and demand of approximately Rs.10/-lacs. Ajay Kumar Gupta & Ms. Poonam Gupta, vide letter dated 14.11.2016, sought forre fund of their amount with interest as there was no development of basic amenities on thespot. The OP gave reminder dated 14.02.2017.

(d) Manorama Sharma & Capt. Manoj Abhishek booked a plot of 350 sq. yards and deposited booking amount of Rs.542500/- on 03.08.2005, Rs.340375/- on 17.12.2005, Rs.45000/- on 02.01.2006. The OP, vide allotment letter dated 28.01.2006, allotted Plot No.612 (area 350 sq. yards), sale price @Rs.7750/- per sq. yard, Block-K, TDI City to them.They deposited Rs.403875/- on 10.02.2006, Rs.403875/- on 11.02.2006 Rs.298375/- on 12.04.2006, Rs.300000/- on 02.08.2006, Rs.260750/- on 10.10.2006, Rs.260000/- on 20.12.2006, Rs.100000/- on 10.02.2007, Rs.161500/- on 13.02.2007, Rs.305375/- on 31.07.2009, Rs.11204/-, Rs.139212/-, Rs.20000/-, Rs.10000/-, Rs.7786/-, Rs.20312/-, Rs.50000/- on 12.12.2011, Rs.111000/- on 24.03.2015, total Rs.3723579/-. The OP executed conveyance deed dated 04.06.2015, in their favour of 338.528 sq. yards and handed over possession on 20.06.2015. Since there was no basic amenities as such they gave legal notice dated 20.06.2016 for demarcation of their plot and provide amenities for construction etc.

(e) Badri Prasad booked a plot of 500 sq. yards and deposited booking amount of Rs.775000/- on 10.11.2005. The OP, vide allotment letter dated 10.12.2005, allotted Plot No.570 (area 500 sq. yards), sale price @Rs.7750/- per sq. yard, Block-L, TDI City to him.Badri Prasad transferred the said plot to Ms. Shobha Tejwani and the OP, vide allotment letter dated 10.01.2006, allotted Plot No.570 (area 500 sq.

yards), sale price @Rs.7750/- persq. yard, Block-L, TDI City to her, who deposited Rs.387500/- on 28.01.2006, Rs.98750/- on 28.01.2006, Rs.603750/- on 21.05.2008, Rs.296250/- on 21.05.2008, Rs.922000/- on 21.05.2008, Rs.800000/- on 21.05.2008, Rs.50600/-, Rs.433250/-, Rs.9975/-, Rs.30360/-, Rs.10000/-, Rs.11.638/- on 29.02.2016, Rs.50000/-, Rs.177700/- on 22.03.2017. The OP also executed Plot Buyer's Agreement dated 20.04.2017 and conveyance deed dated 05.07.2017, in her favour of 506 sq. yards and handed over possession on 28.07.2017. Since there were no basic amenities as such she is not able to raise construction etc.

4.The complainant stated that TDI Infrastructure Limited (the OP) was a company, registered under the Companies Act, 1956 and engaged in the business of development and construction of group housing project. The OP launched an integrated township of residential/ commercial plots, in the name of "TDI City" at Kundli, district Sonapat, Haryana, in the year 2009 and made wide publicity that township was being developed in 1000 acre land under Development Licences granted by Director, Town and Country Planning, Haryana. Believing upon the representations of the OP, above members/their predecessors booked a residential plot of different sizes, in the year 2005 and deposited booking amount. The OP allotted residential plots on different dates from December, 2005 to February, 2006, in Blocks F, K, L. The OP realized almost 100% of the price up to December, 2007 to July, 2009 under the threat of cancellation and for forfeiture from all the members. The OP used to issue demand notices in the head of enhanced EDC and penal interest on it. The OP also executed conveyance deeds in favour of Ms. Aparna Sharma & Sandeep Sharma, Ms. Manorama Sharma & Capt. Manoj Abhishek, Ms. Shobha Tejswani and issued possession letters. The OP developed 415 acre land out of total 981.5 acre land and obtained "part completion certificate" on 18.11.2013. The blocks F, K, L, in which, the members of the complainant are allotted plots, basic amenities, like water supply, electricity, sewerage disposal, demarcation, horticulture etc. are not developed/started although 11 years have expired from booking. In spite of various letters, reminders to the OP and complaints to various development authorities, the OP did not develop basic amenities. Due to inordinate delay in development, cost of

construction is rising high day to day. The members of the complainant are residing in rented accommodation and paying rent. Then this complaint was filed on September, 2017, alleging deficiency in service and unfair trade practice.

5. The opposite party filed its written reply on 02.01.2018, in which booking of the plot, allotment of the plot and deposit made by the members of the complainant, have not been disputed. The opposite party stated that Dr. Shammi Jain, Ajay Kumar Gupta & Ms. Poonam Gupta, and Ms. Shobha Tejwani are not original allottees rather subsequent purchasers from open market. The members of the complainant invested money in real estate, for commercial purpose and are not consumers. Sale of plot does not fall within the ambit of consumer legislation. The members, who have taken possession after conveyance deed, the complaint on their behalf is not maintainable. The members booked their plots at different time in different block, some of them have taken possession, after conveyance deed and not on same footing as such one complaint on their behalf is not maintainable. It has been denied that the plots allotted to the members of the complainant are not developed and basic amenities, like water supply, electricity, sewerage disposal, demarcation, horticulture etc. are not available to these blocks. The members of the complainant are allotted plots in blocks F, K, L, in which, all promised amenities are developed and agreements are executed in favour of the neighbouring allottees and they have taken possession. External Development Charges (EDC) are statutory charges and realized on pro-rata basis. Government of Haryana enhanced the rate of EDC, as such, enhanced amount was realized by the OP. Government of Haryana was realizing penal interest on delayed payment of enhanced EDC. No time for delivery of possession was provided as such, it cannot be said that the OP has committed deficiency in service. Economic destabilization of the country due to steep global economic disturbance has adversely affected real estate industry and the real estate developers are facing difficult times with falling demand, negligible sales, depleting cash flow, increased borrowing costs, costs of development and labour. Due to unforeseen circumstances resulted into hindrances in development, which also led to shortfall of cash flow. The farmers, whose land has been acquired

also used to raise disturbance time to time, due to all these reasons beyond the control of the OP, the project was delayed. The OP is developing an area 1097.894 acres land at Kundli, as TDI City, for which, various licences were granted for different area of land. But entire land has been amalgamated into one integrated township. Completion/occupation certificate are being issued as per development licences and at present, the OP has obtained Completion/occupation certificate in respect of 415 + 109.5 acres land. The OP has offered possession over about 4100 plots, 2800 flats, 500 shops and 400 residential floors in TDI City, at Kundli. In the allotment letter, basic price has been mentioned but at the time of offer of possession EDC, IDC, service tax, other statutory taxes and cess are also payable. It is denied that the members of the complainant used to approach the OP time to time for taking possession but the OP abstained from responding. The reason for delay in possession is attributable to the members of the complainant as they have been non-compliant with the agreed terms. There is no deficiency in service on their part.

6. The complainant filed Replication and stated that the OP could not obtain 'completion certificate' in respect of Block Nos. F, K, L. The OP realized EDC @Rs.1662/- per sq. yard, while rate of EDC was @Rs.640/- per sq. yard, which was enhanced to Rs.790/- per sq. yard. Live electricity wire is passing through Plot No.K-581, allotted to Ms. Aparna Sharma & Sandeep Sachin and no construction can be raised on it. All the members, on whose behalf, present complaint has been filed booked residential plot for their own residence. Basic amenities, like water supply, electricity, sewerage disposal, demarcation, horticulture etc. are not available to any plot allotted to the members of the complainant, till the date. The complainant filed judgment of this Commission dated 13.04.2016 passed in CC/246/2010, Gurdarshan Singh Kalra Vs. TDI Infrastructure Limited, which related to the plot situated in "K-Block of TDI City, Kundli", in which, this Commission, relying upon the local inspection report dated 02.02.2016, held that at one place board of Block-K was placed but entire place, which had some unconnected lamppost was just like jungle. The plots have not been demarcated and one cannot identify his plot.

7. The complainant filed Affidavit of Evidence and Affidavit of Admission/Denial of document of Subhash Garg and documentary evidence and Affidavits of Dr. Shammi Jain, Ms. Aparna Sachin Sharma, Ajay Kumar Gupta, Ms. Manorama Sharma and Ms. Shobha Tejwani. The OP filed Affidavit of Evidence and Affidavit of Admission/Denial of document of Paras Arora and documentary evidence. The complainant filed IA/3259/2022, under Section 340 Cr.P.C. for lodging criminal complaint against the OP. Both the parties have filed written arguments.

8. We have considered the arguments of the counsel for the parties and examined the record. Relying upon the judgment of this Commission in *Moulivakkam Trust Heights Flat Affected Buyer's Association Vs. M/s. Prime Sristi Housing Pvt. Ltd.*, 2017 SCC On Line NCDRC 163 and Supreme Court in *Brigade Enterprises Vs. Anil Kumar Virmani*, (2022) 45CC 138, the counsel for the OP submitted, the complaint consists two categories of the allottees i.e. (i) who has obtained sale deed from the OP and taken possession, and (ii) who has been offered possession. The grievances of these persons are not identical and one complaint is not maintainable. Supreme Court in *Brigade Enterprises Vs. Anil Kumar Virmani*, (2022) 4 SCC 138, held that the complaint can be filed by one or more consumers jointly, who may or may not have same interest. At present, the complaint can be filed by one or more consumers jointly or on their behalf by a 'recognised consumer association, who may or may not have same interest under Section 12(1)(a) and 12(1)(b) of the Consumer Protection Act, 1986. The OP has set up its defence, as such, individual grievance can be examined without prejudice to anyone. Supreme Court in *Wg, Cdr. Arifur Rehman Vs. DLF Southern Homes Private Limited*, (2020) 16 SCC 512, held that execution of sale deed during pendency of the complaint, does not affect the other rights/remedies claimed in the complaint. In *Debashis Sinha Vs. R.N.R. Enterprises* (2023) 3 SCC 195, held that any deficiency detected post purchase, opens up an avenue for the aggrieved consumer to seek relief before consumer fora.

9. Ajay Kumar Gupta & Ms. Poonam Gupta filed IA/7027/2022, for deleting their names from the complaint, which is allowed and the names of Ajay Kumar Gupta & Ms. Poonam Gupta are deleted. The OP executed conveyance

deed in favour of Ms. Aparna Sharma & Sandeep Sachin on 04.06.2015 and handed over possession to them on 20.06.2015. The OP executed conveyance deed in favour of Ms. Manorama Sharma & Capt. Manoj Abhishek on 04.06.2015 and handed over possession to them on 20.06.2015. The complaint has been filed in September, 2017. Section 24-A of the Consumer Protection Act, 1986 provides two years limitation. The claim of Ms. Aparna Sharma & Sandeep Sachin and Ms. Manorama Sharma & Capt. Manoj Abhishek are barred by limitation. Dr. Shammi Jain was offered possession on 29.06.2016 and Ms. Shobha Tejwani was given possession on 20.07.2017, their claim are within limitation.

10. The objection of the OP that Dr. Shammi Jain and Ms. Shobha Tejwani are not original allottees rather subsequent purchasers, is concerned, Supreme Court in Laureate Buildwell Pvt. Ltd. Vs. Charanjeet Singh, AIR 2021 SC 4229, held that a subsequent purchaser steps into shoes of original allottee. At the most period for possession can be counted from the date of his transfer. Dr. Shammi Jain (agreement was executed in her favour on 11.09.2008 and last deposit on 08.07.2009) and Ms. Shobha Tejwani (allotted on 10.01.2006 and major portion of price was deposited till 21.05.2008) are not original allottees but transfer/allotment in their favour in the year 2008 and 2006 and the OP has realized more than 90% consideration. Even after more than ten years of deposit, the OP could not develop their plots.

11. By a separate judgment in CC/1700/2016, it has been found that in blocks H, I, J, K, L, all promised amenities are developed till 2019. Even till today the OP is not able to develop Block Ms. F, L. Supreme Court in Bangalore Development Authority Vs. Syndicate Bank, (2007) 6 SCC 711, Fortune Infrastructure Vs. Trevor D' Limba, (2018) 5 SCC 442, Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan, (2019) 5 SCC 725, Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, 2019 (6) SCALE 462 and has held that the home buyer cannot be made to wait for indefinite period for possession.

12. The complainant has filed IA/3259/2022, for lodging criminal complaint against the OP. It has been stated that several criminal cases have been registered against the OP as such we do not propose to

lodge one more criminal complaint against the OP. IA/3259/2022 is rejected. In view of aforesaid discussions, the complaint is partly allowed, with cost of Rs.one lacs payable to each Dr. Shammi Jain and Ms. Shobha Tejwani and on whose behalf this complaint has been filed. The opposite party is directed to refund entire amount deposited by Dr. Shammi Jain and Ms. Shobha Tejwani (including expenses incurred in the sale deed), with interest @9% per annum from the date of respective deposit till the date of payment, within a period of two months from the date of this judgment.