



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1131 OF 2020

Smt. Sneh Lata

...COMPLAINANT

VERSUS

M/S TDI Infrastructure Ltd.

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Anil Kumar Panwar

Member

Dilbag Singh Sihag

Member

Date of Hearing: 08.04.2021

Hearing: 3rd

Present: - Mr. Vikas Deep, Ld. Counsel for the Complainant through VC.
Mr. Shubhnit Hans, Ld. Counsel for the Respondent through VC.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. Reply has been filed by the respondent and the same has been received by learned counsel for the complainant.
2. Learned counsel for the complainant briefed the facts of the complaint before the Authority that the complainant booked a flat in the project named "Espania Royale Floor-KRF" of the respondent situated in Kamaspur, Sonipat on 12.03.2012. Flat No. RF-60/GF, measuring 1224 sq. ft. was allotted to her vide allotment letter dated 04.01.2013. Flat Buyer Agreement (hereinafter referred to as FBA) was executed between the parties on 16.02.2013. As per clause 28 of FBA, delivery of the flat was to be made within 30 months from the date of agreement, thus deemed date of delivery of the apartment was 16.08.2015. Payments were to be made under Construction linked payment plan. He has paid Rs.32,75,209 /- against a total sale consideration of Rs. 34,99,084/-.

Main grievance of the complainant is that respondent has issued an Offer for Fit Out Possession cum demand letter on 19.03.2020 for an amount of Rs. 11,38141/-. He has been informed for the first time vide this demand letter about unilateral increase of super area from 1224 sq. fts. to 1456.56 sq. fts. i.e. about 232.56 sq. fts which is almost an increase by 19 percent of the original area as agreed. Her grievance against the respondent is on three grounds;

- i. offer for fit out possession dated 19.03.2020 has been issued by the respondent without obtaining occupation certificate;
 - ii. charges demanded on the pretext of increase in apartment super area from 1224 Sq. fts. to 1456.56 Sq. fts. should be adjudged as per order dated 19.03.2019 passed by the Authority in bunch of complaints i.e. Complaint No. 734-738 of 2018 titled as Pavel Garg vs TDI Infrastructure Ltd. ; and
 - iii. respondent be directed to pay interest for delay in delivery of possession till handover of the unit along with Occupation Certificate as per provision of Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.
3. On the other hand, respondent has filed his reply dated 30.03.2021 pleading that he had filed an application for grant of occupation certificate on 31.03.2017 but the same has not been granted to the respondent by the concerned department till date. So, an offer of "Fit Out Possession" was made to the complainant on 19.03.2020 along with additional demand of outstanding dues which were worked out at Rs. 11,38,141/-. Said demand, according to the respondent, is perfectly correct and valid as per Builder Buyers Agreement, therefore, complainant is liable to pay the same. As far as increase in super area of the flat is concerned, respondent's plea is that the area at the time of booking was tentatively given as 1224 sq. fts. but after

completion of the building raised as per sanctioned plan, said area has been increased to 1456.56 sq. fts. So, complainant is liable to pay for the increased area in terms of agreement entered between the parties.

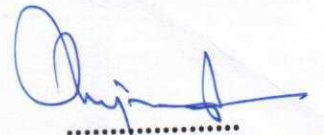
4. Prima facie, Authority observes that when respondent has already admitted that offer of fit out possession was made on 19.03.2020 whereas deemed date of possession was 16.08.2015, accordingly, even in offering a fit out possession, a delay of nearly five years has taken place. Therefore, offer for fit out possession dated 19.03.2020 cannot be termed a proper and legal offer of possession. It could be inferred that application for issuance of Occupation Certificate filed vide letter dated 31.03.2017 by the respondent promoter would have been defective due to which the Department of Town & Country Planning has not granted him Occupation Certificate till date. In these circumstances, it can be concluded that a proper and legal offer of possession is yet to be made. Accordingly, respondent promoter is liable to pay interest on account of delay in handover of possession from the deemed date of possession till the actual / legally valid delivery of possession along with Occupation Certificate of booked apartment to the complainant as sought from the Authority. Such interest as per the decision of this Authority in complaint case No. 113 of 2018 – titled as “Madhu Sareen Versus BPTP Limited” is to be calculated as per Rule 15 of the HRERA Rules, 2017.

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In the present case, complainant wants to wait for a legally valid handover of possession i.e. along with Occupation Certificate subject to upfront payment of interest amount for delay in delivery of possession till 31.03.2021. As per calculations by the office of the Authority, respondent is liable to pay Rs.16,62,606/- as interest on account of delay in delivery of possession to complainant till 31.03.2021. Hence, respondent is directed to make an upfront payment of Rs. 16,62,606/- as interest for delay in delivery of possession to the complainant within 45 days of uploading of this order on the website of the Authority. Since, a legally valid offer of possession is yet to be made, respondent shall also pay monthly interest amounting to Rs. 25,383/- to the complainant from date of order till valid handover of the unit i.e. till the date of receipt of Occupation Certificate.


It is contended by learned counsel for the complainant that super area of her unit shall be adjudged as per order dated 19.03.2019 passed by the Authority in bunch of complaints i.e. Complaint No. 734-738 of 2018 titled as Pavel Garg vs TDI Infrastructure Ltd., and to dispose of the present case as per aforesaid complaints. Respondent is directed to recalculate super area and issue revised statement of accounts as per principles laid down by the Authority in the aforesaid complaint and charge amounts from the complainant accordingly.

Disposed of accordingly. File be consigned to the record room and the order be uploaded on the website of the Authority.




RAJAN GUPTA
[CHAIRMAN]

Discussed telephonically with Sh. A.K. Panwar, Hon'ble Member-I. Due to Covid-19, he could not sign, however, he consented to the above order.



Executive Director,
HRERA Panchkula
30.04.2021

ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]