



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 662 OF 2021

Renu Joshi

....COMPLAINANT(S)

VERSUS

1. TDI Infracorp (India) Limited.

.....RESPONDENT(S)

2. TDI Realcon Pvt Ltd

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 08.07.2022

Hearing: 6th

Present: - Mr. Satish Mishra, Ld. Counsel for the complainant.

Mr. Ajay Ghanghas, Ld. Counsel for the respondents.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. At the outset, learned counsel for the complainant stated that complainant had booked her unit vide application dated 24.05.2013 in the project named 'Waterside Floors in Lake City Grove' of the respondents, located in Sonapat. Floor No. WF-135/FF, measuring 1400 sq. ft. was allotted to her on 18.09.2013. Floor Buyer Agreement (hereinafter referred to as FBA) was executed between parties on 25.03.2014. As per FBA, delivery of the flat was to be made within 30 months from the date of agreement, thus deemed date of delivery was on 25.09.2016. Complainant has paid Rs. 57,89,700/- till date against basic sale consideration of Rs. 56,00,000/-.

Main grouse of the complainant is that respondents had offered her fit out possession on 01.06.2021 along with a demand of Rs. 15,41,084/-, after a delay of about five years from the deemed date of delivery and that too without obtaining Occupation Certificate. Therefore, complainant has sought upfront interest on account of delay in handing over of possession apart from monthly interest till the date of legally valid handover of possession i.e. after receipt of Occupation Certificate.

They are further aggrieved on the ground that respondents vide aforesaid offer letter informed them about unilateral increase in super area from 1400 sq. ft. to 1520 sq. ft. i.e. by 120 sq. fts. which has put additional financial burden on her. Ld. counsel for the complainant stated that such an increase in



super area of floor is unreasonable, unjustified and illegal, therefore, said demand may be quashed.

She has also impugned demands made by the respondents vide said offer letter against following components:

- (a) External Development Charges (EDC) Rs. 4,33,504/-
- (b) Miscellaneous Expenses (ME) Rs. 59,000/-
- (c) Club Membership Charges (CMC) Rs. 88,500/-
- (d) Interest Free Maintenance Charges Rs. 72,960/-
- (e) Electrical and Fire Fighting Charges (EEFC) 1,21,600/-
- (f) Goods & Service Tax (GST) Rs. 31,496/-.

Complainant has requested that these illegal charges be quashed.

2. Learned counsel for the respondents stated that respondents have applied for grant of Occupation Certificate for the project. Further, respondents had offered fit out possession to the complainant on 01.06.2021 but the complainant has not been coming forward to take possession of the flat.

3. After hearing both parties and perusal of records of the case, Authority observed that respondents have made an offer for fit out possession dated 01.06.2021 after a delay of about five years from the deemed date of delivery. No documents have been placed on record which show present status of

Occupation Certificate of the project. Since there is no information regarding status of receipt of Occupation Certificate, Authority is of the view that said offer of fit out possession dated 01.06.2021 is not legal since it is without Occupation Certificate. Thus, a proper and lawful offer of possession is yet to be made. Therefore, Authority further observes that respondents are liable to pay upfront interest for delay in delivery of possession of booked property to the complainant as per Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, apart from monthly interest to the complainant from the date of order till the date a valid handover of the unit is offered i.e. after receipt of Occupation Certificate from the concerned department.

Further as per provisions of section 18 of The RERA Act, 2016, accrued interest up to the date of passing this order shall be paid upfront within 90 days and monthly interest thereafter up to receipt of Occupation Certificate shall also be paid. Both amounts will be worked out as per Rule 15 of the HRERA Rules, 2017.

Respondents are also directed to follow the principles laid down by the Authority in Complaint No. 607 of 2018 titled Vivek Kadyan Versus M/s TDI Infrastructure Pvt. Ltd., Complaint No. Parmeet Singh vs M/s TDI Infrastructure Pvt. Ltd. and Complaint No. 83 of 2019 titled Adesh Vats Versus M/s TDI Infrastructure Pvt. Ltd. for calculation of super area. Respondent shall issue a fresh statement of accounts at time of offer of possession after receipt of



Occupation Certificate, wherein he shall revise the amount charged on account of super area accordingly.

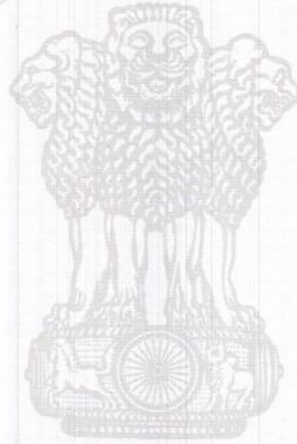
4. Admittedly, complainant has paid total amount of Rs 57,89,700/- which includes the amount of Rs. 3,99,280/- towards EDC and Rs. 31,496/- towards VAT. The amounts of EDC & VAT are collected by the promoter for payment to the department/authorities entitled to receive it for carrying their statutory obligations. If a builder does not pass on this amount to the concerned department, then interest becomes payable to the department or authority concerned and the defaulting builder in such eventuality will himself be liable to bear the burden of interest. The delay interest accordingly deserves to be calculated only on amount of Rs. 53,58,924/- (Rs 57,89,700/- - Rs. 3,99,280/- - Rs. 31,496/-).

5. As per calculations verified by the Accounts Branch, amount payable by respondents to the complainant on account of interest for delay in handover of possession of the unit up to the date of passing of this order has been worked out to Rs. 29,48,628/- .Authority orders that upfront payment of Rs. 29,48,628/- will be made to complainant on account of delay caused in offering possession within 90 days and further monthly interest @ Rs. 43,318/- will be paid to complainant by the respondents w.e.f. 08.07.2022 till the date a legally valid offer of possession is made.



6. Respondents are directed to make a legal offer of possession only after obtaining Occupation Certificate. Said offer letter shall be accompanied with statement of accounts showing payables and receivables at that time. In case, complainant feels aggrieved on account of any charges levied by respondent at time of delivery of possession along with Occupation Certificate, she will be at liberty to approach The Authority regarding the same.

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



सत्यमेव जयते

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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]