



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 1468 OF 2021

Sandeep Kumar

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited.

.....RESPONDENT(S)

**CORAM:** Rajan Gupta

**Chairman**

Dilbag Singh Sihag

**Member**

**Date of Hearing:** 08.07.2022

**Hearing:** 3<sup>rd</sup>

**Present:** - Mr. Balkar Singh, Ld. counsel for the complainant through VC.  
Mr. Shubhnit Hans, Ld. counsel for the respondent.

**ORDER** (DILBAG SINGH SIHAG-MEMBER)

1. While initiating arguments, learned counsel for the complainant stated that complainant had booked a flat in the project named 'ESPANIA FLOORS', of the respondent, located in Sonapat on 11.08.2011. Flat No. EF-26/ Duplex, measuring 1499 sq. ft. was allotted to the complainant vide allotment letter dated 19.10.2011. Builder Buyer Agreement (hereinafter referred to as BBA) was executed between parties on 14.12.2017. As per BBA, delivery of the flat was to be made within 30 months from the date of agreement, thus deemed date of delivery was on 14.06.2019. Complainant has paid about Rs. 31,77,953/- till date against basic sale consideration of Rs. 29,99,994/-.

Main grouse of the complainant is that even after lapse of about eleven years from the date of booking, respondent has failed to offer possession of apartment to the complainant. Therefore, he is seeking upfront interest on account of delay in handing over of possession along with monthly interest till the date of legally valid handover of possession i.e. handover of possession after receipt of Occupation Certificate.

2. Learned counsel for the respondent stated that respondent has offered fit out possession to the complainant on 21.02.2022. he further stated that respondent had filed an application for grant of Occupation Certificate on 12.09.2016 but the same was dismissed by the Director, Town & Country Planning Department, Haryana vide order dated 30.05.2018. Further, an appeal

was filed by the respondent against said order but the same was also dismissed on 26.09.2019 on account of non-prosecution. Presently, respondent is unable to deliver unit to the complainant as he has not received Occupation Certificate till date. Respondent has admitted payment of Rs. 31,77,953/- vide his statement of accounts.

3. Refuting arguments of the respondent, learned counsel for the complainant apprised the Authority that respondent has offered fit out possession recently on 21.02.2022 which was during the pendency of this complaint and that too without obtaining Occupation Certificate. Complainant cannot be compelled to wait for indefinite period to get possession of the unit. Therefore, complainant should be allowed refund of Rs. 31,77,953/- along with interest as per rule 15 of the HRERA, Rules 2017.

4. After hearing both parties and perusal of records of the case, Authority observed that first application filed by the respondent for grant of Occupation Certificate was rejected by the Department of Town and Country Planning on 30.05.2018. Appeal filed by the respondent against said order was also dismissed on 26.09.2019. Learned counsel for the respondent has verbally apprised the Authority that now a fresh application for grant of Occupation Certificate has been filed on 17.02.2022 before Town & Country Planning Department, Haryana. He is hopeful that the same will be granted soon. Unit is claimed to be complete and respondent has offered fit out possession of unit to

the complainant vide letter dated 21.02.2022. In such circumstances, respondent promoter is liable to pay interest on amount paid by the complainant for delay caused in handing over of possession from the deemed date of possession till actual / legally valid delivery of possession of booked flat is made to the complainant after obtaining Occupation Certificate.

Further, as per provisions of section 18 of The RERA Act, 2016, respondent promoter is liable to pay interest to the complainant as per Rule 15 of the HRERA Rules, 2017, on account of delay caused in handing over of possession from deemed date of possession till the actual / legally valid delivery of possession of the unit is made that too after obtaining Occupation Certificate.

5. Admittedly, complainant has paid total amount of Rs. 31,77,953/- which includes the amount of Rs. 3,93,239/- towards EDC. The amount of EDC is 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. 27,84,714/- (Rs. 31,77,953/- – Rs. 3,93,239/-).

6. As per calculations made by Accounts Branch, amount payable by the respondent 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. 8,29,593/- .The Authority orders that upfront payment of Rs. 8,29,593/- will be made to the complainant on account of delay caused in offering possession within 90 days and further monthly interest @ Rs. 22,510/- will be paid to the complainant by the respondent w.e.f. 08.07.2022 till the date a legally valid offer of possession is made.

7. Respondent is 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.

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



RAJAN GUPTA  
[CHAIRMAN]

DILBAG SINGH SIHAG  
[MEMBER]