



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 1187 OF 2021

Sarita

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited.

....RESPONDENT(S)

**CORAM:**

**Rajan Gupta**

**Chairman**

**Dilbag Singh Sihag**

**Member**

**Date of Hearing:** 28.06.2022

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

**Present:** - Mr. Ivneet Pabla, Ld. Counsel for complainant through VC.

Mr. Shubhnit Hans, Ld. Counsel for the respondent.

### **ORDER** (RAJAN GUPTA-CHAIRMAN)

1. Learned counsel for the complainant stated that original allottees had booked the flat in the project named 'Tuscan City', of the respondent situated at Sonapat in the May, 2010. Flat No. T-40/SF, measuring 1164 sq. ft. was allotted to complainant vide allotment letter dated 03.12.2010. Builder Buyer Agreement

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(hereinafter referred to as BBA) was executed between parties on 10.03.2011. 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 10.09.2013. As per receipts annexed by complainant, she has paid about Rs. 12,42,054/- till date against basic sale consideration of Rs. 23,50,000/-.

Grouse of the complainant as per complaint was that respondent has failed to deliver possession of booked unit even after delay of about nine years from the deemed date of delivery. She had sought delivery of possession of a similarly placed unit in adjoining tower in the same project because as per her information, construction of Tower-40 in which her unit was located was incomplete and at standstill.

2. Today, learned counsel for the complainant has made a statement at bar that respondent has informed the complainant that construction of original unit is complete, therefore, complainant is willing to take possession of the originally allotted unit. Therefore, complainant 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. till receipt of Occupation Certificate.

3. No reply on merits of the case has been filed by respondent till date but learned counsel for respondent verbally submitted that respondent had applied for grant of Occupation Certificate on 09.05.2014 but same has not been granted

by Department of Town & Country Planning. He further argued that since complainant has not sought relief of interest for delay in delivery of possession in the prayer clause of the complaint, therefore, said relief cannot be granted to her.

4. After hearing both parties and perusal of records of the case, Authority observes that the complainant in her complaint had originally sought delivery of possession of a similarly placed unit in adjoining tower in the same project because as per her information, construction of Tower-40 in which her unit was located was incomplete. Now, respondent has categorically stated that construction of the originally allotted unit is complete. Occupation Certificate, however, is yet to be obtained. Complainant is entitled to offer of possession after obtaining Occupation Certificate. therefore, his statement that he had applied for grant of Occupation Certificate in the year 2014 cannot be taken into account.

Learned counsel for complainant has further stated that at time of filing present complaint the originally allotted unit was not complete therefore, he had sought relief of delivery of possession alternate unit in adjoining tower in the same project but now the complainant is willing to take possession of the original unit if the same is complete. In such circumstances, since the unit originally allotted is stated to be complete and complainant is willing to take possession of the same, therefore, respondent is directed to issue a proper and lawful offer of possession on receipt of Occupation Certificate by him.



Respondent promoter is liable to pay interest on account of delay caused in handing over of possession from the deemed date of possession till the 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, the accrued interest up to the date of passing this order shall be paid upfront within 90 days and monthly interest thereafter till receipt of Occupation Certificate shall also be paid. Both the amounts will be worked out as per Rule 15 of the HRERA Rules, 2017.

5. Learned counsel for respondent has taken a plea during the course of hearing that Authority cannot grant to complainant interest for delay in delivery of possession of unit as same has not been sought in the complaint. Authority has been conferred with power to grant interest for delay in delivery of possession by section 18 of THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016. It is settled law that procedural defects and irregularities cannot not be allowed to defeat substantive rights granted by statute. Procedure cannot be made a tool to deny justice or perpetuate injustice. Hon'ble Apex Court in **Sardar Amarjit Singh Kalra (Dead) by Lrs. v. Pramod Gupta (Smt) (Dead) by Lrs. & Anr. 10 (2003) 3 SCC 272** has observed as under:

“26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of

citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice.....”

Hon'ble Apex Court has reiterated the principle that Courts must lean towards doing substantial justice rather than relying upon procedural and technical violations in its plethora of its judgments. Notwithstanding, absence of prayer clause in complaint, Authority, as per principle laid down by Hon'ble Apex Court, and as per power conferred upon Authority under the RERA Act 2016, orders that complainant is entitled to upfront payment of interest on account of delay caused in offering possession along with monthly interest w.e.f. 28.06.2022 till the date a legally valid offer of possession is made.

6. As per receipts annexed by complainant as Annexure-C-4 to C-11, she has paid total amount of Rs 12,42,054/-. The delay interest accordingly deserves to be calculated on the amount of Rs. 12,42,054/-.

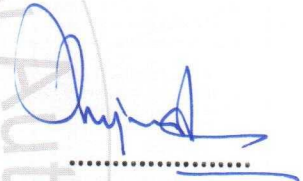
7. As per calculations made and verified by Accounts Branch, the amount payable by respondent to the complainant on account of interest for delay in handover of possession of the unit up to the date of passing of this order has been worked out to Rs. 10,60,877/- 2017 @ SBI MCLR + 2 % on the date of order. The Authority orders that upfront payment of Rs.10,60,877/- will be made to complainant on account of delay caused in offering possession within 90 days and further monthly interest @ Rs. 10,040/- will be paid to complainant by the

respondent w.e.f. 28.06.2022 till the date a legally valid offer of possession is made.

8. Respondent is further directed to make a legal offer 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.



  
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**RAJAN GUPTA**  
[CHAIRMAN]

  
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**DILBAG SINGH SIHAG**  
[MEMBER]