



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 2347 OF 2019

Mukesh Khanna

....COMPLAINANT(S)

VERSUS

TDI Infracorp (INDIA) Limited.

....RESPONDENT(S)

2. COMPLAINT NO. 2348 OF 2019

Mukesh Khanna

....COMPLAINANT(S)

VERSUS

TDI Infracorp(INDIA) Limited.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 13.07.2022

Hearing: 9th

Present: - Mr. Vikas Deep, Ld. Counsel for complainant through VC.

Mr. Kunal Jain, Ld. Proxy Counsel for respondent.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. While perusing case file, it is observed that all the issues raised by the complainants have been heard and decided vide order dated 08.03.2022. Cases were relisted today only for determination of amount payable by the respondent to the complainant on account of interest for delay in offer of possession of his respective units. Since there was ambiguity regarding details of interest paid by the respondent to bank, therefore, Authority had granted opportunity to both parties to file their claim/s along with supporting documents regarding the amount which complainants had paid to the bank due to default on the part of the respondent. Authority had also observed that amount paid by the complainant to bank will also be treated as the amount paid by complainant to respondent. Relevant part of order dated 08.03.2022 is reproduced below: -

“3. In view of above resolution, Authority decides to proceed further for adjudication of both captioned complaints. These captioned complaints are being disposed of through this common order because core issue involved in these cases are

identical, and pertain to same project of the respondent i.e. 'Water Side Floors-TDI Lake Grove City' Kundli, Sonapat. Facts of **Complaint case no. 2347 of 2019 Mukesh Khanna vs TDI Infracorp Ltd.** are being taken into consideration for disposal of both the cases.

5. Case of the complainant is that he booked a floor bearing no. WF-133 having area of 1750 sq. fts. in the project of respondent namely "Waterside Floors" in TDI Lake Grove City, Kundli, Sonapat by depositing initial amount of Rs. 7,00,000/-. Floor Buyer Agreement was executed between parties on 27.09.2013. As per the agreement, possession of booked floor was to be handed over within 30 months from the date of agreement, thus deemed date of delivery comes to 26.03.2016. Complainant has paid Rs. 64,87,574/- till 07.09.2017 against basic sale consideration of Rs. 63,99,999/-. An MoU dated 18.02.2014 was signed between the parties in which it was stipulated in clause 5 that complainant is entitled to reimbursement of interest every month till the date of offer of possession by respondent. Learned counsel for complainant averred that respondent has failed to deposit monthly amount of interest in the bank under interest subvention scheme in terms of tripartite agreement in both cases.

Further grouse of the complainant is that despite lapse of approximately six years from deemed date of delivery, respondent has failed to deliver him possession of floors, therefore, complainant is seeking refund of Rs. 69,26,126/- along with interest as per Rule 15 of the HRERA, Rules 2017.

6. Learned counsel for respondent stated that respondent had offered fit out possession of both units to the complainant in

June, 2021. He informed the Authority that an amount of Rs. 2,16,538/- and Rs. 7,76,052/- respectively is yet to be paid by respondent as monthly interest to bank under subvention scheme. He stated that respondent undertakes to deposit the same. Learned counsel for the respondent verbally informed the Authority that Occupation Certificate has been applied for and possession of completed floors will be handed over to the complainant on receipt of the same in both cases.

7. At this stage, learned counsel for complainant stated that complainant is willing to take delivery of possession of the floors on receipt of Occupation Certificate.

8. Upon hearing of both parties and perusal of record, Authority observes that since admittedly offer for 'fit out possession' made by respondent in June, 2021 was without proper Occupation Certificate, therefore, said offer cannot be termed a lawful offer of possession. Learned counsel for complainant in both cases has admitted receipt of said letter of 'fit out possession'. No information regarding receipt of proper Occupation Certificate has been placed on record by the respondent, except oral submission made by learned counsel for respondent that Occupation Certificate has been applied for and same will be received soon. Learned counsel for complainant has stated that complainant is willing to take delivery of floors after receipt of Occupation Certificate in both cases.

In these circumstances, it is concluded that a proper and lawful offer of possession is yet to be made by the respondent. Accordingly, respondent promoter is liable to pay interest on account of delay caused in handing over of possession from the

deemed date of possession till actual valid delivery of possession of booked units 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 in both cases. Said amounts will be worked out as per Rule 15 of the HRERA Rules, 2017.

9. After making aforesaid pronouncement in the Court, when Authority perused the record for calculation of interest on account of delay caused in handing over of possession, it was observed that complainant has allegedly paid Rs. 13,55,307/- directly to the respondent in each case. The remaining installments have been paid by bank to the respondent as per MOU. As per MOU respondent has also paid certain amount as interest to the bank. Therefore, in such circumstances, complainant is entitled to receive interest only on amount actually paid by complainant to respondent i.e. Rs. 13,55,307/- in each case on account of delay caused in handing over of possession from the deemed date of possession till actual valid delivery of possession of booked units is made to the complainant after obtaining Occupation Certificate. Respondent cannot be made liable to pay interest for delay in handing over possession to complainant on loan amount paid by bank to him at this stage because respondent itself is paying interest to the bank.

10. As per calculations made by Accounts Branch, the amount payable by respondent to the complainant on account of interest for delay in handing over of possession of the units up to

the date of passing of this order has been worked out to Rs. 7,50,390/- .

11. The details of interest paid by the respondent to bank lacks clarity and documentary proof. Further, complainants vide email dated 11.04.2022 have furnished certain documents alleging that respondent has failed to pay interest since Dec, 2019 to the bank in both cases, therefore, they had to pay same to the bank. In such circumstances, Authority deems it fit to grant both parties one more opportunity to file their claim/s by way of affidavit supported by relevant documents regarding the amount which complainant has paid to the bank due to default on the part of the respondent. This amount will also be treated as the amount paid by complainant to respondent. In these circumstances, both cases are relisted on 25.05.2022 only for determination of amount payable by respondent to the complainant on account of interest for delay in offer of possession of units.”

2. Complainant vide affidavit dated 07.07.2022 has furnished proof of payments along with copy of bank statements. Copy of same has been supplied to respondent's counsel in both cases. On account of failure on part of the respondent to pay interest to bank since Dec, 2019, complainant has paid Rs. 10,94,068/- to the bank w.e.f. 16.12.2019 till 15.06.2022 in Complaint No. 2347 of 2019. Similarly, in Complaint No. 2348 of 2019 complainant has paid Rs. 10,03,563/- to the bank w.e.f. 05.12.2019 till 05.07.2022. Amount paid by complainant to bank in both complaints have been wrongly mentioned in his

affidavit as 10,95,068/- and 10,04,563/- whereas same add up to Rs. 10,94,068/- and Rs. 10,03,563/- in Complaint No.s 2347-2019 and 2348-2019 respectively.

3. Complainant has allegedly paid Rs. 13,55,307/- directly to the respondent in each case. Complainant has paid Rs. 10,94,068/- & Rs. 10,03,563/- to the bank in each case. Amount paid by complainant to bank will also be treated as the amount paid by the complainant to respondent. Thus, complainant has paid Rs. 24,49,375/- (Rs. 13,55,307/- + Rs. 10,94,068/-) to respondent in complaint no. 2347 of 2019 and Rs. 23,58,870/- (Rs. 13,55,307/- + Rs. 10,03,563/-) in complaint no. 2348 of 2019. Therefore, complainant is entitled to receive interest only on Rs. 24,49,375/- in complaint No. 2347 of 2019 and Rs. 23,58,870/- in complaint no. 2348 of 2019 on account of delay caused in handing over of possession from the deemed date of possession till actual valid delivery of possession of booked units is made to the complainant after obtaining Occupation Certificate.

4. As per calculations verified by Accounts Branch, the amount payable by respondent to the complainant on account of interest for delay in handing over of possession of the units up to the date of passing of this order in Complaint No. 2347 of 2019 has been worked out to Rs. 981167/- and Rs. 958018/- in Complaint no. 2348 of 2019. The Authority orders that upfront payment of Rs. 981167/- in Complaint no. 2347 of 2019 and Rs. 958018/- in Complaint no. 2348 of 2019/- will be made to the complainant on account of

delay caused in offering possession within 90 days. In addition, respondent shall continue to pay monthly interest to bank under subvention scheme till possession of unit is handed over to the complainant in each case after obtaining Occupation Certificate.

Disposed off. Files be consigned to record room and orders be uploaded on the website of the Authority.



RAJAN GUPTA
[CHAIRMAN]

DILBAG SINGH SIHAG
[MEMBER]