



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 959 OF 2021

Vandana Mathur

....COMPLAINANT/S

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 29.07.2022

Hearing: 7th

Present: - Mr. Jitender Vashisht, Ld. Counsel for the complainant through VC.
Mr. Shubhnit Hans, Ld. Counsel for the respondent.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. Initiating his pleadings, learned counsel for the complainant submitted that complainant had booked a flat in the project named "Tuscan Heights" of the respondent situated at Sonapat in March, 2010. Flat No. T-134 measuring 1546 sq. fts. was allotted to complainant. Flat Buyer Agreement (hereinafter referred to as FBA) was executed between parties on 02.05.2012.

As per FBA, delivery of apartment was to be made within 30 months from the date of agreement, thus deemed date of delivery was on 02.11.2014. Complainants has paid Rs. 37,58,992/- against total sale consideration of Rs. 36,00,000/-.

Grouse of the complainants is that despite lapse of about eight years from the deemed date of delivery, respondent has failed to handover possession to her. Respondent has also failed to obtain Occupation Certificate for the project. Therefore, on account of multiple defaults by the respondent, complainants have sought refund of Rs. 37,58,992/- along with interest as per Rule 15 of the HRERA, Rules 2017.

2. In response, learned counsel for the respondent has apprised the Authority that they had filed an application for grant of occupation certificate on 09.05.2014 but the same is still pending before Director, Town & Country Planning Department, Haryana. Learned counsel for the respondent further stated that complainant was offered fit out possession on 23.06.2015 but complainant did not come forward to take the possession of the flat.

3. Learned counsel for the complainant denied receipt of said offer letter. He stated that construction of flat is still incomplete which is proved by the fact that respondent's application for grant of Occupation Certificate dated 09.05.2014 was rejected by the Department of Town & Country Planning, Haryana.

4. After hearing both parties and perusal of records of the case, Authority observes that respondent has failed to prove that alleged offer for fit out possession dated 23.06.2015 was duly delivered to the complainant. No postal receipt qua its delivery to complainant has been placed on record by respondent. Even the alleged offer letter was without Occupation Certificate, therefore, it cannot be termed as proper legal offer. Due date of delivery of apartment was in Nov, 2014. Even after an extraordinary delay of over eight years from the deemed date of delivery, respondent has failed to handover possession of flat to the complainant. Thus, respondent has utterly failed to perform his contractual liabilities.

Further, it is assumed that the application filed for issuance of Occupation Certificate vide letter dated 09.05.2014 by the respondent promoter was defective due to which Department of Town & Country Planning has not granted Occupation Certificate till date. In these circumstances, it is concluded that a proper and lawful offer of possession is yet to be made. Further, inordinate delay of eight years has already been caused which defeats the purpose of booking an apartment. Respondent has been using the amount deposited by complainant for the last ten years without any justification. In such circumstances, complainant cannot be compelled to wait for indefinite period to get possession of the unit. Purpose of buying the unit has got totally frustrated due to inordinate delay. Therefore, on account

of multiple defaults by respondent, Authority finds it to be a fit case for allowing refund of the amount paid by the complainant and directs the respondent to refund Rs. 37,58,992/- paid by the complainant along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017 from the date of making payments up to the date of passing of this order.

5. As per calculations made by Accounts Branch, amount payable by the respondent to the complainant along with interest has been worked out to Rs. 77,36,759/- (Rs. 37,58,992/- + Rs. 39,77,767/-). Therefore, Authority directs the respondent to refund Rs. 77,36,759/- to complainant.

6. Respondent shall pay the entire amount to the complainant within 90 days of uploading this order on the web portal of the Authority. Disposed of in these terms. File be consigned to the record room and order be uploaded on website of Authority.


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RAJAN GUPTA
[CHAIRMAN]


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DILBAG SINGH SIHAG
[MEMBER]