



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 2719 OF 2019

Nirmal Kumar

...COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

2. COMPLAINT NO. 2997 OF 2019

Dinesh Kumar Jain

...COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

3. COMPLAINT NO. 2187 OF 2019

Viksit Jain

...COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 29.07.2022

Hearing: 4th in Complaint No. 2719 & 2997 -2019

9th in Complaint No. 2187-2019

Present: - Mr. Vaibhav Mittal, Ld. Counsel for complainant through VC.
(in Complaint No. 2719 -2019).

Mr. Sandeep Singh Ghanghas, Ld. Counsel for complainant
through VC. (in Complaint No. 2997 -2019).

Mr. Vivek Sethi, Ld. Counsel for complainant through VC.
(in Complaint No. 2187 -2019).

Mr. Shubhnit Hans, Ld. Counsel for respondent.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. All captioned complaints are being disposed of through this common order for the reason that core issues involved in all cases are identical. All cases pertain to the same project of the respondent i.e. 'Rodeo Drive-TDI City' at Kundli, Sonapat. This order is being passed in view of the facts of lead **Complaint case no. 2719 of 2019 Nirmal Kumar vs TDI Infrastructure Ltd.**


2. On last date of hearing i.e. 08.03.2022, detailed order was passed by Authority. Facts of the case and arguments advanced by both parties were recorded therein. Relevant part of aforementioned order dated 08.03.2022 is reproduced below:



“ 4. Case of the complainant is that Original allottee had booked a shop in the project named “Rodeo Drive-TDI City” of the respondent situated at Sonipat in May, 2006. Shop No. FF-17, measuring 800 sq. fts. was allotted to complainant on 31.08.2006. Allotment of shop was transferred in name of the complainant in August, 2008. Builder Buyer Agreement (hereinafter referred to as BBA) was executed between parties on 21.11.2011. As per BBA, delivery of the shop was to be made within 30 months from the date of agreement, thus deemed date of delivery was on 21.05.2014. Complainant has paid Rs. 32,40,000/- against sale consideration of Rs. 24,42,420/- till date.

Learned counsel for complainant stated that respondent had offered possession of the shop on 22.03.2019 without actually completing the project, as is reflected in photographs attached at page no 34 of the complaint. He stated that the Commercial Plaza itself is incomplete. Even whole of area/ colony where complainant's shop is located is uninhabitable. He stated that aforesaid offer of possession was made not only after delay of sixteen years from the date of booking but respondent has unilaterally increased super area of the shop from initial area of 800 sq. fts. to 838.31 sq. ft which is illegal. Therefore on account of multiple defaults by respondent, complainant is seeking refund of Rs. 32,40,000/- along with interest as per Rule 15 of the HRERA, Rules 2017.

5. Leaned counsel for the respondent has disputed the allegations made by complainant on the ground that project has been developed and Part Completion Certificate was granted



by Department of Town & Country Planning, Haryana on 23.01.2008, 18.11.2013 and 22.09.2017. Learned counsel for respondent also stated that respondent Company has already received Occupation certificate in respect of the said commercial site measuring 6.558 acres which is a part of residential plotted colony area measuring 1097.894 acres (TDI City) vide letter dated 12.06.2019 issued by the Director, Town & Country Planning Department, Haryana. Respondent had offered fit out possession of the said shop to the complainant on 22.03.2019. He stated that the shop of the complainant, the Commercial Plaza as well as nearby area/colony is fully developed and sought some time to place on record evidence and latest photographs to support his averments. On a query put by the Authority that whether respondent has obtained Occupation Certificate qua complainant's shop, learned counsel sought adjournment to seek instructions.

6. After hearing arguments of both the parties and perusal of record, Authority observes that both parties are giving conflicting statements regarding completion of the shop, respondent has stated that shop is complete as he has received Part Completion Certificate as well as Occupation Certificate for the project but the complainant asserts that his shop is incomplete. In such scenario, both parties are directed to visit the site to ascertain present status of completion of the shop and file evidence and latest photographs of the shop and surrounding area/colony at least two weeks before the next date of hearing. Respondent shall establish that shop as well as nearby area/ colony is complete, inhabitable and ready for



usage. He shall file status of Occupation Certificate specifically qua shop of complainant. Respondent shall also file an affidavit stating total number of shops/units in the project, number of shops/units handed over to the allottees and number of shops/units already constructed along with a copy of layout plan/building plan of the said Plaza as well as the project. Said information shall also be reflected in the layout plan and building plan with distinct colour differentiation. All aforesaid information shall be filed within two weeks with an advance copy to the complainant failing which the matter will be heard and decided on merits on basis of documents available on record.

In case, respondent fails to establish that the shop is complete; has received Occupation Certificate; and the Commercial Plaza as well as colony is inhabitable and ready for usage, the Authority will consider it to be a fit case for allowing refund of the amount paid by the complainant and will proceed to grant refund of the amount paid to 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 the order on the next date of hearing. Respondent shall also file documents showing that super area of the shop has been increased as per plans sanctioned by the Department of Town and Country Planning, Haryana.

7. Complainant is also at liberty to file latest photographs showing current stage of completion of his shop with an advance copy to the respondent.

8. Case is adjourned to 10.05.2022.”



3. Learned counsel for the respondent has submitted documents in compliance of order dated 08.03.2022 vide application dated 09.05.2022 in Complaint Nos. 2719 & 2997-2019. He further stated that copy of same has been supplied to the complainants. He also stated that project has been developed and it was only after development of the project, respondent had offered fit out possession of said shop to the complainant on 22.03.2019. He has attached photographs with said application which show that shop of complainant, the Commercial Plaza as well as nearby area/colony are complete and fully developed. Learned counsel for the respondent also stated that respondent Company has already received Occupation certificate in respect of the said commercial shop vide letter dated 12.06.2019 issued by the Director, Town & Country Planning Department, Haryana.

4. After hearing arguments of both parties and perusal of record, Authority observes that respondent has received Occupation Certificate for the shop on 12.06.2019. He has offered fit out possession of said shop to the complainant on 22.03.2019. Therefore, request of complainant for refund of amount deposited by him cannot be accepted as same will adversely affect the project.

In such scenario, Authority observes that complainants shall be entitled to interest for the delay caused by respondent in offering possession of shops at the rate prescribed in Rule 15 of HRERA Rules, 2017 for the period



from the deemed date of possession i.e. 21.05.2014, 08.07.2009 and 21.08.2009 respectively in Complaint No. 2719-2019, 2997-2019 and 2187-2019 upto the date of receipt of occupation certificate i.e. 12.06.2019 (Date of receipt of Occupation Certificate Department of Town & Country Planning, Haryana i.e. 12.06.2019 has to be taken as valid offer of possession) Accordingly, respondent is also entitled to same rate of interest for the period of delay, if any, caused by the complainants in payment of the outstanding amounts. It is further directed that period between date of receipt of occupation certificate i.e. 12.06.2019 and date of order i.e. 29.07.2022 shall be treated as zero period for both parties for purposes of no charges/interest would be receivable/payable for said period.

5. On perusal of record, it has been observed that booked area of shop in Complaint No. 2719-2019 has been unilaterally increased by respondent from 800 sq. fts to 838.31 sq. fts. Further, respondent has unilaterally reduced super area of shops in Complaint No. 2997-2019 and Complaint No. 2187-2019 from initial super area 500 sq. fts to 453.91 sq. fts., and 500 sq. fts. to 380.13 sq. fts. respectively. Learned counsels for complainants did not raise any grievance regarding the same during arguments today. In such, circumstances, respondent is directed to measure actual area of the shop in presence of the complainants and charge them as per actual area. In case, respondent fails to do so or complainants are not satisfied with



measurements made by respondent at site, then complainants will be at liberty to approach this Authority for resolution of the same.

6. Respondent shall handover possession of shops to complainants in all cases as well as issue fresh statement of accounts within 30 days of uploading of this order. Respondent is directed to issue said statement of accounts strictly as per provisions of THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 and principles laid down by the Authority.


7. Admittedly, complainant has paid total amount of Rs. 32,40,000/- in the Complaint No. 2719 of 2019. 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 shop from the deemed date of delivery up to date of receipt of Occupation Certificate i.e. 12.06.2019 has been worked out to **Rs. 16,08,478/-**.

8. Admittedly, complainant has paid total amount of Rs. 22,00,000/- in the Complaint No. 2997 of 2019. 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 shop from the deemed date of delivery up to date of receipt of Occupation Certificate i.e. 12.06.2019 has been worked out to Rs. **23,59,048/-**.



9. Admittedly, complainant has paid total amount of Rs. 14,60,000/- in the Complaint No. 2187 of 2019. 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 shop from the deemed date of delivery up to date of receipt of Occupation Certificate i.e. 12.06.2019 has been worked out to Rs. **15,55,741/-**.

10. The Authority orders that aforesaid payment of interest on account of delay caused in handing over of possession of shops to complainants in each case be made within 90 days of uploading of this order on the web portal of the Authority. **Disposed of in these terms.** Files be consigned to the record room and the orders be uploaded on the website of the Authority.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]