



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 608 OF 2021

Patanjali Bedi

....COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

**CORAM: Rajan Gupta**

**Chairman**

**Dilbag Singh Sihag**

**Member**

**Date of Hearing: 10.08.2022**

**Hearing: 12<sup>th</sup>**

**Present: - Mr. Patanjali Bedi, Complainant.**

Mr. Shubhnit Hans, Ld. Counsel for respondent.

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

1. On perusal of record of the case, it is observed that Authority has passed a detailed order on 28.06.2022. Facts of the case and arguments

advanced by both parties were recorded therein. Relevant part of  
aforementioned order dated 28.06.2022 is reproduced below:

“1. Case of the complainant is that she booked an flat in the project named “Tuscan City” of the respondent situated in Kundli, Sonapat in July, 2010. Flat No. T-39/TF measuring 1164 sq. fts. was allotted to complainant. Flat Buyer Agreement (hereinafter referred to as FBA) was executed between parties on 20.02.2012. As per FBA, delivery of flat was to be made within 30 months from the date of agreement, thus deemed date of delivery was on 20.08.2014. Complainant has paid Rs. 24,18,074/- against total sale consideration of Rs. 21,50,000/- till date.

Further, even after lapse of about eight years from the deemed date of delivery, respondent has failed to complete the construction of flat and offer its possession to the complainant. Thus, respondent has failed to perform his contractual obligation to deliver possession of their units till date. Complainant cannot be compelled to wait further for indefinite period of time to get possession of her allotted unit, therefore, she is seeking refund of Rs. 23,85,164/- along with interest as per Rule 15 of the HRERA, Rules 2017.

2. Learned counsel for respondent has admitted that no offer for delivery of possession has been made to the complainant till date and no definite time/date can be given for delivery of the same. He further stated that respondent had applied for grant of Occupation Certificate on 09.05.2014 but

the same has not been granted to them by the Department of Town & Country Planning.

3. After perusal of record and hearing arguments advanced by counsel for respondent, Authority observes that despite lapse of about eight years from the date of deemed delivery, respondent has failed to offer possession of the allotted flat to complainant. Thus, already an extraordinary delay has been caused by respondent to complete and deliver the flat to the complainant which amounts to breach of terms of the FBA. Further, delivery of possession of flat along with Occupation Certificate does not seem possible in foreseeable future. Moreover, respondent has been using the amount deposited by complainant for the last twelve years without any reasonable justification. After such a delay in completion of the flat, complainant cannot be compelled to continue with the booking of flat and wait for indefinite period of time to get its possession. Therefore, Authority, prima facie finds it to be a fit case for allowing refund of the amount paid by the complainant along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017.

4. Since, none is present for complainant today, case is adjourned to 10.08.2022 for its final disposal.”

2. Learned counsel for the respondent reiterated arguments advanced by him on the last date of hearing. He informed the Authority that respondent had applied for grant of Occupation Certificate on 09.05.2014 but the same has not been granted to them by the Department of Town & Country

Planning. He further apprised the Court that construction is going on at full swing and flat of complainant will be delivered to the complainant after completion along with Occupation Certificate. Respondent vide its statement of accounts attached as Annexure R-6 has admitted payment of Rs. 24,18,073.87/- by the complainant.

3. After hearing arguments of both the parties and perusal of record, Authority observes that booking of flat was made in July, 2010 and respondent has failed to handover delivery of flat to the complainant even after lapse of approximately twelve years of booking. Respondent has failed to specify a definite date by which he will be able to handover delivery of the flat to the complainant. It seems that application dated 09.05.2014 filed by the respondent promoter for issuance of Occupation Certificate might be defective due to which Department of Town & Country Planning has not granted Occupation Certificate till date.

Above facts prove that respondent is unable to give a proper and lawful offer of possession to the complainant at present as he has not received Occupation Certificate from the concerned department till date. No offer for delivery of possession of flat has been made yet. Already an extraordinary delay has been caused by respondent to complete and deliver the flat to the complainant which amounts to breach of terms of the BBA. Further, delivery of possession of flat along with Occupation Certificate does not seem possible in foreseeable future. When such inordinate delay has already been caused, it

is to be presumed that the purpose of booking the flat has got defeated. In such, circumstances, the option will be of the allottee-complainant to continue with the project or withdraw from it. Therefore, due to huge delay in offer of possession, the purpose of booking present flat by complainant has been defeated. Thus, failure of respondent to deliver possession of flat even after a huge delay of about twelve years from date of booking in the year 2010 has frustrated the very purpose of booking the flat. Thus, an inordinate delay has already been caused in handover of possession of the flat. Complainant cannot be compelled to continue with the booking of flat and wait for an indefinite period of time to get its possession. Moreover, respondent has been using the amount deposited by complainant for the last twelve years without any reasonable justification. Therefore, 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. 24,18,073.87/- 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.

4. Respondent vide its statement of accounts attached as Annexure R-6 has admitted payment of Rs.24,18,073.87/- by the complainant. Therefore, interest has been calculated on amount admitted by respondent as to be paid by complainant. As per calculations made by Accounts Branch, amount payable by the respondent to the complainant along with interest has been worked out to Rs43,00,824.87/- ( Rs. 24,18,073.87/- + Rs. 18,82,751/-).

Therefore, Authority directs the respondent to refund Rs. 43,00,824.87/- to the complainant.

5. Respondent shall pay the entire amount to the complainant within 90 days of uploading of order on the website of the Authority.

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





RAJAN GUPTA  
[CHAIRMAN]



DILBAG SINGH SIHAG  
[MEMBER]