



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## 1. COMPLAINT NO. 1115 OF 2020

Hitesh Girdhar

...COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

...RESPONDENT

## 2. COMPLAINT NO. 1116 OF 2020

Dr. Atul Girdhar

...COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

## 3. COMPLAINT NO. 1352 OF 2020

Vikram Grover

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Private Limited.

....RESPONDENT(S)

**Date of Hearing:** 09.08.2022

**Hearing:** 5<sup>th</sup> in Complaint No.s 1115-2020 & 1116-2020.

6<sup>th</sup> in Complaint No.1352-2020.

**Present: -** Ms. Neelam Singh, Ld. Counsel for the complainants through VC.

( in all complaints).

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

VC. ( in all complaints).

**ORDER** ( RAJAN GUPTA-CHAIRMAN)

1. All captioned complaints are being disposed of through this common order for the reason that core issues involved in these cases are identical. All cases pertain to the same project of the respondent i.e. "Tuscan City' Kundli, Sonapat. This order is being passed keeping in view facts of lead

**Complaint case no. 1115 of 2020 Hitesh Girdhar vs TDI Infrastructure Ltd.**

2. Facts of the case were recorded in order dated 08.03.2022, the relevant part of which is reproduced as below:

"5. Case of the complainant is that she had booked her unit in the project named "TDI Tuscan City-Phase-I" of the respondent situated at Sonipat in Feb, 2010. Floor No. T-50/GF measuring 1164 sq. fts. was allotted to her on 01.02.2011. Floor Buyer Agreement (hereinafter referred to as FBA) was executed between parties on 13.11.2015. As per FBA, delivery of the flat was to be made within 30 months from the date of agreement, thus deemed date of delivery was on 13.05.2018. Complainant



has paid Rs. 28,43,186/- till date against total sale consideration of Rs. 30,36,926/-.

Learned counsel for the complainant apprised the Court that unit of the complainant is part of Phase-I of Tuscan City. This Phase of the project is not even been registered under the RERA Act, 2016.

Grouse of the complainant is that despite lapse of approximately twelve years from booking and payment of about ninety percent of sale consideration, respondent has failed to deliver her possession of the unit till date. As per complainant the construction of her unit is presently at a standstill. Hence, through present complaint she is seeking refund of Rs. 28,43,186/- along with interest as per Rule 15 of the HRERA, Rules 2017.

6. Learned counsel for the respondent after confirmation from the company stated that although construction had stopped in the past but presently construction is going on at full swing. He stated that units will be ready soon for possession and will be delivered to the complainants after completion along with Occupation Certificate. He is seeking some time to file his reply.

7. Admittedly, booking of both units was made in Feb,2010 and despite lapse of approximately twelve years of booking, units of the complainants are still incomplete. Non registration of project under RERA Act, 2016 also prima facie supports the plea of the complainant that units as well as the project is still incomplete. In such circumstances, Authority

grants last opportunity to the respondent to file his reply along with evidence and latest photographs showing current stage of completion of the units as well as project. He shall also specify a reasonable scheduled date of completion of the units failing which Authority will presume that the units are incomplete and cannot be handed over for possession to the complainants in near future and will proceed to grant refund of the amount paid to the complainants along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017 on the next date of hearing. Respondent is directed to supply a copy of aforesaid reply to the complainants within two weeks from today failing which the matter will be heard and decided on merits on basis of documents available on record.”

3. Authority vide its order dated 10.05.2022 had prima facie observed that units appear to be incomplete and uninhabitable. Since, both parties were giving conflicting statements regarding completion of the units, therefore, Authority had appointed Local Commissioner to ascertain status of construction/completion of units of both complainants; to evaluate the existing condition of the project; and if units as well as nearby area/ colony/project is complete, inhabitable and ready for usage in Complaint No.s 1115-2020 and 1116-2020. Local Commissioner was also entrusted responsibility to ascertain the existence of any deficiency in the unit and whether it is fit for

possession and usage in Complaint No. 1352-2020. Relevant part of aforementioned order dated 10.05.2022 is reproduced below:

“4. Learned counsel for the respondent stated that in Complaint no. 1352 of 2020, offer for fit out possession was made to the complainant on 06.10.2015. Admittedly, No Objection Certificate dated 06.10.2015 was issued by the respondent after receiving all payments from the complainant except stamp duty (Annexure-C-5). Complainant stated that he did not take possession of the unit on account of deficiencies existing in the unit at the time of said offer. Complainant has also annexed email dated 24.09.2020 (Annexure C-12), which shows that deficiencies were removed by respondent. So, in such scenario, when offer for fit out possession has been made and even the deficiencies have been removed, complainant cannot refuse to accept possession of the unit.

5. After hearing both parties and perusal of records of the cases, Authority observes that as recorded vide order dated 08.03.2022 that the present status of completion of the units as well as project is unknown. Respondent has also failed to file his reply along with evidence and latest photographs showing current stage of completion of the units as well as project; and specify a reasonable scheduled date of completion of the units in compliance of aforesaid order.

6. Admittedly, 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. Hence, Authority observes that application dated



09.05.2014 filed by the respondent promoter for issuance of Occupation Certificate would have been defective due to which Department of Town & Country Planning has not granted Occupation Certificate till date. In these circumstances, it is inferred that a proper and lawful offer of possession could not be made till respondent receives Occupation Certificate from the concerned department. Thus, offer for fit out possession made to the complainant without receipt of Occupation Certificate on 06.10.2015 in Complaint no. 1352 of 2020 cannot be termed as a legal offer. No offer has been made in Complaint Nos. 1115 & 1116 of 2020.

In such circumstances, although prima facie, units are incomplete and uninhabitable but since both parties are giving conflicting statements regarding completion of the units, therefore, Authority deems it appropriate to appoint a Local Commissioner to ascertain status of construction/completion of units all the complainants; to evaluate the existing condition of the project; and if units as well as nearby area/ colony/project is complete, inhabitable and ready for usage. Local Commissioner shall inspect the site in question in the presence of the both parties and inform the parties in all complaints in advance about the date on which he would inspect the units/site. The parties are directed to be present on the site on the date of inspection. Since admittedly, respondent has made a delay in handover of possession of the units in all cases and has even failed to obtain Occupation Certificate from the concerned department, therefore, clearly respondent is at fault. Thus, on account of multiple defaults by the respondent, the expenses of Local



Commissioner shall be borne by the respondent company. Local Commissioner shall file his report regarding existing condition of the project and status of completion of the units, within 15 days of his appointment with an advance copies to the parties.

7. In case, report received from Local Commissioner establishes that units are incomplete; cannot be handed over to the complainants in a few months and colony is uninhabitable and not ready for usage, the Authority will consider them to be fit cases for allowing refund of the amount paid by the complainants and will proceed to grant refund of the amount paid to the complainants 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.

8. Respondent shall also file all the correspondence made with the concerned department qua his application for grant of status of Occupation Certificate specifically qua units of complainants within two weeks with an advance copy to the complainants.”

4. In furtherance of order dated 10.05.2022, M/s General Highways and Infracon Pvt. Ltd. was appointed Local Commissioner vide letter dated 20.06.2022. Expenses of Local Commissioner were ordered to be borne by respondent company. Local Commissioner had filed its report dated 28.06.2022 along with bill. Bill raised by the local commissioner amounts to Rs. 41,300/- inclusive of GST. Respondent company had submitted a cheque



of Rs. 41,300/- on 20.07.2022 in favour of Authority. Said amount of Rs. 41,300/- was remitted to M/s General Highways and Infracon Pvt. Ltd. (Local Commissioner) on 28.07.2022.

5. Taking, cognizance of the report submitted by Local Commissioner, Authority vide its order dated 30.06.2022 had prima facie held that these cases are fit for allowing refund of the amount paid by the complainants along with interest at the rate stipulated in Rule 15 of the HRERA Rules, 2017. Relevant part of aforementioned order dated 30.06.2022 is reproduced below:

“2. Reply has been filed by respondent in Complaint No. 1115 of 2020. Local Commissioner has filed his report on 28.06.2022. Local Commissioner has also filed his bill of Rs. 41,300/-.

3. On the last date of hearing, Authority vide its order dated 10.05.2022 had prima facie observed that units in both complaints appear to be incomplete and uninhabitable. Since both parties were giving conflicting statements regarding completion of the units, therefore, Authority had appointed Local Commissioner to ascertain status of construction/completion of units of both complainants; to evaluate the existing condition of the project; and if units as well as nearby area/ colony/project is complete, inhabitable and ready for usage.



4. On perusal of report filed by Local Commissioner, it is established that construction of units in both the complaints is incomplete and nowhere near completion. Relevant part of report filed by Local Commissioner is reproduced below:

“The RCC framework structure & brickwork of both the units have been completed. The construction work in this area is moving at snail pace and there is no work going on at Unit T-50 GF. The construction is incomplete and nowhere near completion. The condition of project near the units is not up to the mark. These units as well as nearby area is incomplete. It is not inhabitable and not ready to use.”

5. Admittedly, complainant had booked her unit in Feb, 2010. As per Floor Buyer Agreement (hereinafter referred to as FBA) dated 13.11.2015, delivery of the flat was to be made within 30 months from the date of agreement, thus deemed date of delivery was on 13.05.2018. Complainant has paid Rs. 28,43,186/- till date against total sale consideration of Rs. 30,36,926/-. Thus, despite lapse of about twelve years from booking and payment of Rs. 28,43,186/- which is about ninety percent of basic sale consideration of Rs. 30,36,926, respondent has failed to deliver possession of the unit to complainants till date. Thus, already an extraordinary delay has been caused by the respondent to complete and deliver the flat to the complainants which amounts to breach of terms of the FBA.

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. Thus,

delivery of possession of flat along with Occupation Certificate does not seem possible in foreseeable future.

It is also pertinent to mention that respondent has been using the amount deposited by complainants for the last twelve years without any reasonable justification. After such a delay in completion of the flat, complainants cannot be compelled to continue with the booking of flat and wait for indefinite period of time to get its possession. In such circumstances, taking into consideration the report filed by Local Commissioner, Authority, prima facie holds that both these cases are fit for allowing refund of the amount paid by the complainants along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017.

6. Learned counsel for the respondent requested that copy of report filed by Local Commissioner be supplied to her. She also sought time to file objections against report filed by Local Commissioner.

7. Copy of report filed by Local Commissioner be supplied to both parties. Respondent as per direction given by Authority vide order dated 10.05.2022, shall deposit Rs. 41,300/- to office of Authority for its payment to Local Commissioner before the next date of hearing. Both cases are adjourned to 09.08.2022 for their final disposal.”

6. Local Commissioner had submitted his report on 28.06.2022, whereby he has given details of existing condition of the project as well as

status of completion of units of complainants. As per report of Local Commissioner, construction of flat No.s T-50/GF and T-42/FF in Complaint No.s 1115 -2020 & 1116-2020 was at standstill and place seemed abandoned as no construction activity was going on at site. Units as well as nearby area/colony/project was reported to be incomplete. The Local Commissioner has concluded that these flats were not in a habitable condition and not ready for usage. Construction of the common areas near these flats were also incomplete.

Local Commissioner has reported that although Flat No. T-96 in Complaint No. 1352-2020 is fit for possession with some minor finishings but common area needs major repairs to make it usable.

7. After hearing arguments of both parties, perusal of record and the report submitted by local commissioner, Authority observes that basic infrastructure has not been developed at the site as has been proved from the report of Local Commissioner. Construction of Flat No.s T-50/GF and T-42/FF is at standstill. No construction activity is going on at site. Units as well as nearby area/colony/project is incomplete. Thus, flats are not in a habitable condition and ready for usage. Even, construction of the common area near these flats is also incomplete. Thus, it is established that Flat No.s T-50/GF and T-42/FF as well as the project are neither complete nor habitable.



Although major construction work of Flat No. T-96 is complete but common area have been reported to be incomplete and requiring major repairs. Local Commissioner has conclusively established that the project is incomplete and not ready for usage. Since, Flat No. T-96 is also part of the same project, it cannot be deemed to be complete till basic infrastructure and common areas are developed.

Further, Authority has also laid down a criteria as to what should be called lawful offer/ handing over of possession in **Complaint Case No. 903 of 2019- Sandeep Goyal Vs. Omaxe Ltd.** In aforesaid case, Authority has held that plot /apartment after its completion must have received Completion Certificate/ Occupation Certificate from department concerned that all basic facilities have been laid and are operational. Secondly plot/ apartment must be habitable and if infrastructural facilities are non-operational then it shall be deemed to be uninhabitable and the offer of possession or handover of possession will not be considered to be legal.

In view of aforesaid principle and observation of Local Commissioner pointing out multiple defects, these flats cannot be called complete or habitable. Therefore, Authority finds all these cases fit for allowing refund of the amount paid by complainants as prayed and directs the respondent to refund the amount paid by complainants 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.

8. Admittedly, complainant has paid total amount of Rs. 28,43,186/- in Complaint No. 1115-2020. Thus, as per calculations made by Accounts Branch, amount payable by the respondent to the complainants along with interest has been worked out to Rs. 55,09,617/- (Rs. 28,43,186/- + Rs. 26,66,431/-). Therefore, Authority directs the respondent to refund **Rs. 55,09,617/-** to the complainant.

9. Admittedly, complainant has paid total amount of Rs. 19,13,274.99/- in Complaint No. 1116-2020. Thus, as per calculations made by Accounts Branch, amount payable by the respondent to the complainants along with interest has been worked out to Rs. 37,11,494.99/- (Rs. 19,13,274.99/- + Rs. 17,98,220/-). Therefore, Authority directs the respondent to refund **Rs. 37,11,494.99/-** to the complainant.

10. Admittedly, complainant has paid total amount of Rs. 34,22,418.51/- in Complaint No. 1352-2020. Thus, as per calculations made by Accounts Branch, amount payable by the respondent to the complainants along with interest has been worked out to Rs. 68,91,891.51/- (Rs. 34,22,418.51/- + Rs. 34,69,473/-). Therefore, Authority directs the respondent to refund **Rs. 68,91,891.51/-** to the complainant.



11. Respondent shall pay entire amount to the complainants within 90 days of uploading 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]

