



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 3085 OF 2019

Manoj Suneja

....COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 09.08.2022

Hearing: 12th

Present: - Mr. Jagan Nath Bhandari, Ld. Counsel for the complainant
through VC.

Complainant present in person.

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

ORDER (RAJAN GUPTA-CHAIRMAN)

1. Present complaint has been filed for execution of the order dated 20.12.2018 in complaint no. 451 of 2018 titled as Manoj Suneja Versus TDI Infrastructure Ltd. vide which respondent was directed to handover possession

of the plot along with interest on account of delay caused in handing over of possession as per Rule 15 of the HRERA Rules, 2017. This execution complaint was filed by the complainant in Jan, 2020.

2. Meanwhile, M/s TDI Infrastrcuture Ltd. had filed Appeal no. 472-2019 against aforesaid order passed by Authority before Hon'ble Haryana Real Estate Appellate Tribunal. Hon'ble Appellate Tribunal observed that the period for calculation of interest for delayed possession was not mentioned in the order dated 20.12.2018 passed by Authority. Therefore, Hon'ble Haryana Real Estate Appellate Tribunal vide order dated 13.02.2020 adjourned aforesaid appeal sine die, till the amount is settled by the Authority. Hon'ble Appellate Tribunal also specified in its order that appeal could be restored by either party once the amount payable by promoter to allottee was determined by the Authority. Relevant Part of said order dated 13.02.2020 passed by Hon'ble Appellate Tribunal is reproduced below:

“ ...The present appeal is pending at the stage of compliance of the provisions of proviso to section 43(5) of the Real Estate (Regulation & Development) Act, 2016 since long. On every date of hearing, respondent is raising objection with respect to the amount payable to him as per the order of the Ld. Authority.

We have already mentioned in our order dated 22.11.2019 that the Authority has not mentioned any period for calculations of interest for delayed possession. The respondent has undertaken to press its application before the Ld. Authority

for giving necessary clarification. The result of that application is not yet known.

So, the present appeal is hereby adjourned sine die till the amount is settled by the Ld. Authority. The present appeal can be got restored by either of the parties once the amount payable by the appellant/promoter to the respondent/allottee is determined by Ld. Authority.”

3. In compliance of order dated 13.02.2020 passed by Hon'ble Appellate Tribunal, detailed order was passed by Authority on 13.07.2022, whereby Authority prima facie observed that complainant's plot should have been delivered to him by 10.08.2009 and had directed both parties to file their respective calculation for delayed interest. Relevant part of order dated 13.07.2022 is reproduced below:

“1. Learned counsel for the respondent has stated that Hon'ble Apex Court while dismissing SLP No. 13093 of 2020 titled as M/S. TDI Infrastructure Ltd. Versus Union of India & Ors. vide its order dated 12.05.2022 has granted 30 days' time from date of order to parties to prefer appeal before Hon'ble Appellate Tribunal against the order of the Authority, provided the appellant(s) comply with the condition of pre-deposit as contemplated under the proviso to Section 43(5) of the Act. He further stated that respondent had already filed an appeal against order dated 20.12.2018 passed by the Authority before Hon'ble Haryana Real Estate Appellate Tribunal. Said appeal filed by



the respondent before Hon'ble Appellate Tribunal, has been adjourned sine die awaiting the precise calculations of the total amount payable by the respondent for interest on account of delay in delivery of possession of the plot.

2. Learned counsel for the complainant stated that the Authority had passed its order dated 20.12.2018 whereby the respondent was directed to handover possession of the plot along with permissible interest on account of delay in handover of the plot. As per complainant, delay interest has to be computed for 11 years i.e. from 2006 whereas respondent is wrongly calculating the same from 2015. Therefore, on account of ambiguity of amount payable by the respondent as interest for delay in handover of possession, the appeal filed against order dated 20.12.2018 passed by Hon'ble Authority, has been adjourned sine die by Hon'ble Haryana Real Estate Appellate Tribunal vide order dated 13.02.2020 Hence, complainant is seeking a clarification of the order dated 20.12.2018. He further informed the Court that the complainant vide this execution complainant has filed his calculation of amount payable to him on account of delay in handing over of possession, which is yet to be confirmed by Hon'ble Authority.

3. After perusal of order dated 20.12.2018, Authority observes that admittedly, Plot Buyers Agreement was executed between parties on 16.10.2015 which was after a delay of ten years from the date of booking in the year 2005. As per version of the complainant, he had paid Rs. 21 lakhs approximately till 10.08.2006 against total sale consideration of Rs. 23,53,125/-. Remaining payment of about five lakhs were made till 2011.

Thus, he has made complete payment of Rs. 27,83,629/- till the year 2011. Since, respondent had obligation to execute agreement with complainant within reasonable time which he clearly failed to perform till 2015. Therefore, Authority is of the view that in this case after taking entire consideration amount, delivery of possession deserved to be given within reasonable period of time which should be three years from date of making substantial payments. Therefore, the deemed date of delivery of plot should be taken as three years from date of making substantial payments which was on 10.08.2006, meaning thereby that complainant's plot should have been delivered to him by the year 10.08.2009.

In view of aforesaid observation both parties are directed to file their respective calculation for interest on account of delay in handover of possession and exchange copy with each other at least two weeks before next date of hearing.

4. Learned counsel for respondent is seeking some time to address his arguments.”

4. Neither party has filed any calculations for delayed interest in compliance of order dated 13.07.2022. On last date of hearing, complainant had stated that he had paid Rs. 27,83,629/- till date but the receipts send by complainant amount to Rs. 27,42,267/-, therefore, interest will be calculated on amount of Rs. 27,42,267/- as proved by receipts.



On the last hearing i.e. 13.07.2022, complainant had stated that he had paid Rs. 21 lakhs till 10.08.2006 but on perusal of receipts sent by complainant via email on 06.09.2022, it has come to notice of Authority that complainant had paid Rs. 24,61,942/- till 09.05.2008 towards sale consideration of the plot. Therefore, the deemed date of delivery of plot has to be taken as three years from date of making substantial payments which was on 09.05.2008, meaning thereby that complainant's plot should have been delivered to him by the year 09.05.2011. Thus, the deemed date of delivery of plot is taken as 09.05.2011. In light of receipts provided by complainant, interim order dated 13.07.2022 passed by Authority stands corrected to this extent.

Details of amount paid by the complainant as per receipts sent by him is mentioned as below:

S. No	Date of Payment/ Receipt	Amount Paid (Rs.)
1.	29.09.2005	3,87,500/-
2.	04.02.2006	2,43,125/-
3.	09.05.2008	18,31,317/-
4.	02.03.2011	2,80,325/-
	Total	27,42,267/-

5. The amount of Rs. 27,42,267/- paid by complainant also includes the amount of Rs. 4,15,625/- towards EDC. The amounts of EDC are collected by the promoter for payment to the department/authorities entitled to receive

it for carrying their statutory obligations. If a builder does not pass on this amount to the concerned department, then interest becomes payable to the department or authority concerned and the defaulting builder in such eventuality will himself be liable to bear the burden of interest. The delay interest accordingly deserves to be calculated only on amount of Rs. 23,26,642/- (Rs. 27,42,267/— Rs. 4,15,625/).

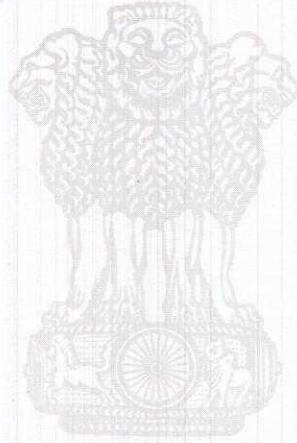
6. As per calculations made by Accounts Branch, amount payable by the respondent to the complainant on account of interest for delay in handover of possession of the plot from the deemed date of delivery up to 20.12.2018 has been worked out to Rs.19,07,034/- . Authority orders, upfront payment of **Rs. 19,07,034/-** be made to the complainant on account of delay caused in offering possession within 90 days of uploading this order on the web portal of the Authority.

Interest payable to complainant by respondent for delayed possession as per calculation by Accounts Branch is reproduced as below:

S. No.	Amount Paid (-EDC) (Rs.)	Interest Period	Interest accrued (Rs.)
1.	23,26,642	09.05.2011 to 20.12.2018	19,07,034/-
	Total		19,07,034/-

7. Complainant has stated that respondent has not handed over possession of plot to him till date. Respondent is directed to handover possession of plot to complainant within 30 days of uploading of this order. In case, respondent fails to make payment of delayed interest as calculated in para 6 of this order or execute order dated 20.12.2018, complainant will be at liberty to revive this execution complaint.

Disposed of in these terms. File be consigned to the record room and the order be uploaded on the website of the Authority.



सत्यमेव जयते

RAJAN GUPTA
[CHAIRMAN]

DILBAG SINGH SIHAG
[MEMBER]