



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 395 OF 2021

Rajesh Kumar Aggarwal

....COMPLAINANT(S)

VERSUS

TDI Infracorp (India) Limited.

....RESPONDENT(S)

**CORAM: Rajan Gupta**

**Chairman**

**Dilbag Singh Sihag**

**Member**

**Date of Hearing: 01.06.2022**

**Hearing: 5<sup>th</sup>**

**Present: -** Mr. Rishi Kapoor, Ld. Counsel for the complainant through VC.  
Mr. Ajay Ghanghas, Ld. Counsel for the respondent.

#### **ORDER (RAJAN GUPTA-CHAIRMAN)**

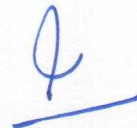
1. Case of the complainant is that he had booked an apartment in project named "Waterside Floors in Lake City Grove" of the respondent situated in Kundli, Sonapat on 18.04.2013. Apartment No. WF-49/FF, measuring 1500 sq. fts. was allotted to complainant on 18.09.2013. Complainant has paid Rs. 57,28,215/- till date against basic sale consideration of Rs. 57,00,000/-. Complainant has attached an undated copy of agreement. Therefore, a proper Builder Buyer Agreement (hereinafter referred to as BBA) cannot be said to have been was executed between parties. In such scenario, when deemed date of

delivery cannot be ascertained from BBA, three years from the date of booking will be taken as deemed date of delivery of floor for purposes of calculation of interest. Therefore, the deemed date of delivery of unit should be taken as three years from the date of booking, meaning thereby that complainant's floor should have been delivered to them by 18.04.2016.

Grouse of the complainant is that even after lapse of about nine years from the date of booking, respondent has failed to offer possession of apartment to the complainant. Therefore, he is seeking upfront interest on account of delay in handing over of possession along with monthly interest till the date of legally valid handover of possession i.e. handover of possession after receipt of Occupation Certificate.

2. Learned counsel for respondent stated that respondent has applied for grant of Occupation Certificate for the apartment as well as for the project. Further, respondent has offered fit out possession to the complainant on 07.02.2022. He furnished the said letter dated 07.02.2022 in the Court today. On a query put by Authority whether respondent has obtained Occupation Certificate qua complainants' apartment and the project, learned counsel for respondent stated that as per instructions received from respondent, Occupation Certificate has been applied for and will soon be granted to the respondent.

3. After hearing both parties and perusal of records of the case, Authority observes that respondent has made an offer for fit out possession dated



07.02.2022 after a delay of about six years from the deemed date of delivery. No documents showing present status of Occupation Certificate of the project have been placed on record by respondent. Since there is no information regarding present status of receipt of Occupation Certificate, Authority concludes that said offer for fit out possession dated 07.02.2022 is sans Occupation Certificate, therefore, it could not be termed a proper and legal offer of possession. Thus, a proper and lawful offer of possession is yet to be made. Therefore, Authority observes that respondent is liable to pay upfront interest for delay in delivery of possession to the complainant as per Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, in addition to monthly interest to the complainant from date of order till the date a valid handover of the unit is offered after receipt of Occupation Certificate from the concerned department.

Further as per provisions of section 18 of The RERA Act, 2016, the accrued interest up to the date of passing this order shall be paid upfront within 90 days and monthly interest thereafter upto receipt of Occupation Certificate shall also be paid. Both the amounts will be worked out as per Rule 15 of the HRERA Rules, 2017.

4. Admittedly, complainant has paid total amount of Rs 57,28,215/- which includes the amount of Rs. 4,27,800/- towards EDC. The amount of EDC is 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. Builder will, therefore, be not liable to pay delay interest to the allottee on the amounts collected for passing over to other department/authorities concerned. The delay interest accordingly deserves to be calculated only on amount of Rs. 53,00,415/- (Rs 57,28,215– Rs. 4,27,800/-).

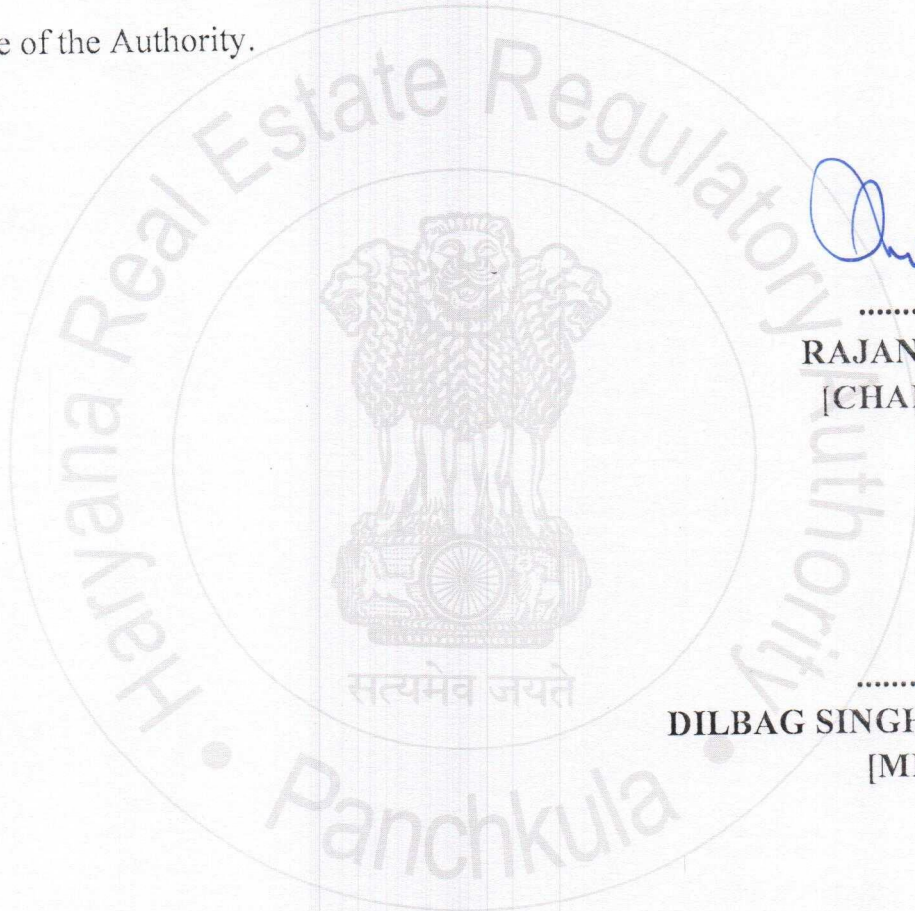
5. As per calculations made by Accounts Branch, the amount payable by respondent to the complainant on account of interest for delay in handover of possession of the unit up to the date of passing of this order has been worked out to Rs. 30,43,302/- .The Authority orders that upfront payment of Rs. 30,43,302/- will be made to complainant on account of delay caused in offering possession within 90 days and further monthly interest @ Rs. 41,962/- will be paid to complainant by the respondent w.e.f. 01.06.2022 till the date a legally valid offer of possession is made.

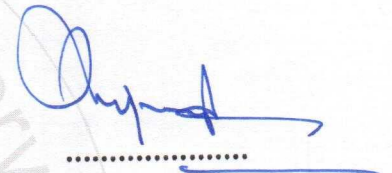
6. Respondent is directed to pay cost of Rs.5,000/- to the office of Authority and Rs. 2,000/- to the complainant which was imposed on him vide order dated 13.10.2021. Respondent is further directed to make a legal offer after obtaining Occupation Certificate. Said offer letter shall be accompanied with statement of accounts showing payables and receivables at that time. Respondent while issuing such statement shall follow the principles laid down by the




Authority in Complaint No. 607 of 2018 titled Vivek Kadyan Versus M/s TDI Infrastructure Pvt. Ltd., Complaint No. Parmeet Singh vs M/s TDI Infrastructure Pvt. Ltd. and Complaint No. 83 of 2019 titled Adesh Vats Versus M/s TDI Infrastructure Pvt. Ltd. Thus, respondent is directed to and charge complainant strictly as per principles laid down in aforesaid complaints.

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



  
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**RAJANGUPTA**  
[CHAIRMAN]

  
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**DILBAG SINGH SIHAG**  
[MEMBER]