



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 1068 OF 2021

Sunita Tyagi

....COMPLAINANT(S)

VERSUS

TDI Ltd.

.....RESPONDENT(S)

**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 01.06.2022**

**Hearing: 2<sup>nd</sup>**

**Present: -** Mr. Anil Kumar Garg, Ld. counsel for the complainant through VC.

Mr. Shubhnit Hans, Ld. counsel for the respondent through VC.

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

1. At the outset, learned counsel for the complainant stated that original allottees had booked the unit in the project named 'ESPANIA ROYALE FLOORS', of the respondent situated at Sonapat. Flat No. RF-55/Duplex, measuring 1499 sq. ft. was allotted to complainant vide allotment letter dated 04.01.2013. Builder Buyer Agreement (hereinafter referred to as BBA) was executed between parties on 09.04.2013. As per BBA, delivery of the flat was to be made within 30 months from the date of agreement, thus deemed date of

delivery was on 09.10.2015. Complainant has paid about Rs. 37,04,881/- till date against basic sale consideration of Rs. 34,99,999/-.

Grouse of the complainant is that after a delay of about seven years, respondent has offered her fit out possession on 21.05.2021 along with additional demands and sans Occupation Certificate. She is further aggrieved on the ground that respondent vide aforesaid offer letter informed her about unilateral increase in super area from 1499 sq. ft. to 1783.81 sq. ft. i.e. by 284.81 sq. fts. which has put additional financial burden of Rs. 6,65,000/- on her. Learned counsel for the complainant states that such a huge increase in super area of flat is unreasonable and unjustified therefore, said demand on account of increased area may be quashed and super area of the flat should be charged strictly as per principles laid down in Complaint No. 83 of 2019 titled Adesh Vats Versus M/s TDI Infrastructure Pvt. Ltd. She 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. till receipt of Occupation Certificate.

Complainant has also impugned demands made by the respondent vide said offer letter against following components: a) Tax charged on basic sale value Rs. 2,26,299/- (b) Interest charged Rs. 1812/-. Complainant has requested for quashing of these additional charges.

2. Learned counsel for respondent while admitting the payment made by the complainant stated that respondent had applied for grant of Occupation



Certificate on 31.03.2017 but same has not been granted by Department of Town & Country Planning. He stated that respondent had issued said offer letter on 21.05.2021 but complainant has not come forward to take possession of the flat till date.

3. After hearing both parties and perusal of records of the case, Authority observes that since offer for fit out possession dated 21.05.2021 is sans Occupation Certificate, therefore, it could not be termed a proper and legal offer of possession. It is assumed that the application filed for issuance of Occupation Certificate vide letter dated 31.03.2017 by the respondent promoter was defective due to which Department of Town & Country Planning has not granted Occupation Certificate till date. In these circumstances, it is concluded that a proper and lawful offer of possession is yet to be made. Accordingly, respondent promoter is liable to pay interest on account of delay caused in handing over of possession from the deemed date of possession till the actual / legally valid delivery of possession of booked flat is made to the complainant after obtaining Occupation Certificate.

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 till 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. Respondent vide Annexure R-5 of his reply has admitted receipt of Rs. 37,04,881/- from complainant. Therefore, the amount admitted by respondent vide Annexure -5 i.e. Rs. 37,04,881/- is taken as amount paid by complainant to respondent. Thus, complainant has paid total amount of Rs 37,04,881/- which includes the amount of Rs. 4,27,515/- towards EDC/IDC and Rs. 22,867/- for VAT. The amount of EDC/IDC and VAT 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. A builder will be therefore 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. 32,54,499/- (Rs 37,04,881 – Rs. 4,27,515/- – Rs 22,867/-).


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. 19,65,788/- .The Authority orders that upfront payment of Rs.19,65,788/- will be made to complainant on account of delay caused in offering possession within 90 days and further monthly interest @ Rs. 25,765/- will be paid to



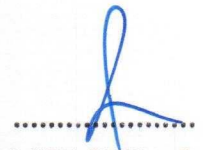
complainant by the respondent w.e.f. 01.06.2022 till the date a legally valid offer of possession is made.

6. Respondent is 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.



RAJAN GUPTA  
[CHAIRMAN]



DILBAG SINGH SIHAG  
[MEMBER]