



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 57 OF 2022

Uma Dutt

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT(S)

**Date of Hearing:** 28.06.2022

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

**Present:** - Mr. Sushil Kumar, Ld. Counsel for the complainant through VC.

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

**ORDER** (RAJAN GUPTA-CHAIRMAN)

1. Learned counsel for complainant stated that original allottee had booked his unit in the project named 'Tuscan Heights', of the respondent situated

9

at Kundli, Sonapat in April, 2011. Flat No. T-1/1101, measuring 1390 sq. ft. was allotted to him on 09.07.2011. Builder Buyer Agreement (hereinafter referred to as BBA) was executed between parties on 30.08.2011. 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 in Feb, 2014. Unit was transferred in favour of complainant in Feb, 2018. He has paid Rs. 44,88,910/- till date against basic sale consideration of Rs. 27,45,250/-.

Grouse of the complainant is that respondent has offered him fit out possession of the flat on 15.05.2018, after a delay of approximately four years and that too without obtaining Occupation Certificate. He further stated that respondent company has charged Rs. 5,21,400/- from him on account of increase in super area from 1390 sq. ft. to 1654 sq. ft. Thus, respondent has unilaterally increased the super area from 1390 sq. ft. to 1654 sq. ft. i.e. by 264 sq. fts., which has put additional financial burden on him. He states that such a huge increase in super area of floor without his consent is unreasonable and unjustified.

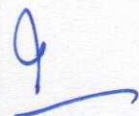
Complainant has also impugned demands made by the respondent vide said offer letter against following components: (a) Electrical and Fire Fighting Charges (EFFC) Rs. 4,21,525/- (b) Miscellaneous Expenses (ME) Rs. 11,800/- (c) Charges demanded on the pretext of increase in apartment area from 1390 sq. ft. to 1654 sq. ft. Rs. 5,21,400/- (d) Club Membership Charges(CMC) Rs. 50,000/- demanded without club in existence (e) Car Parking Charges (VPK)

1,82,613/- without allotting any specific car parking space. Aggrieved by aforesaid demands, complainant is seeking refund of these additional charges.

He further stated that he paid outstanding amounts against him at time of taking possession under compelling circumstances. NOC for handover of possession of unit was issued by respondent on 19.12.2018.

In addition to aforesaid grievances, learned counsel for complainant stated that respondent has also failed in providing infrastructural facilities like permanent electricity connection, sewage treatment plant, water treatment plant, two fully operational lifts in tower, maintenance and security etc. Therefore, respondent be also directed to provide basic infrastructural facilities in the project. He is also seeking registration of unit in his favour after completion of the tower in which his unit is situated.

2. Learned counsel for the respondent 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 till date. Complainants had already visited the unit before signing 'NOC' and they also had full knowledge about non-receipt of Occupation Certificate at the time of taking possession of the unit and signing 'NOC'. Despite these facts, complainants took possession of the unit in December, 2018. NOC for handover of possession of unit was issued on 19.12.2018. Admittedly, complainant had shifted and enjoying possession of unit since January, 2019 without any objection/grievance. Thus, grievances raised by complainants after about three



and half years of issuance of 'NOC' is an afterthought. Therefore, respondent is not liable to refund any charges as alleged by complainant. He further stated that in case complainant had grievances regarding alleged additional charges, he should have raised his objections at the time of taking possession of the unit. Therefore, present complaint is not maintainable at such a belated stage.

3. After hearing both parties and perusal of records of the case, Authority observes that offer for fit out possession was issued on 15.05.2018. NOC for handover of possession of unit was issued by respondent on 19.12.2018. Admittedly, complainant had shifted and enjoying possession of the unit since January, 2019. He never approached nor communicated with respondent company in any way expressing his dissatisfaction regarding alleged excess amounts charged on account of Electrical and Fire Fighting Charges (EFFC), Miscellaneous Expenses (ME), charges demanded on the pretext of increase in apartment area from 1390 sq. ft. to 1654 sq. ft., Club Membership Charges(CMC) and Car Parking Charges (VPK). No communication with respondent company regarding excess amount charged from him on aforesaid accounts has been placed on record by the complainant. No legal action was initiated by complainant against respondent company regarding the same was taken by complainant after taking possession of the unit. Therefore, it will have to be presumed that complainant took possession of the unit and signed 'NOC' after he was fully satisfied with the unit as well as project. Moreover, complainant has taken possession of unit and has been residing in the same since



January, 2019, which implies that the contractual relationship between parties had come to an end. The contract executed between complainant and respondent cannot continue to operate till forever especially when both parties have given signed acceptance that all obligations towards each other are fully satisfied and there are no obligations left on any side to fulfil. As per NOC for handover of Possession of unit dated 19.12.2018, complainant had taken possession of the unit on an undertaking signed by him that no claim against respondent survives. Relevant part of said NOC showing undertaking given by complainant is reproduced below:


“I, Uma Dutt and Bimla Devi have received the NOC for my unit no:- T-1/1101 submit that I am fully satisfied regarding my unit and henceforth shall not claim anything from the company. I undertake to take the physical possession of my unit from the site within a period of ninety days from the receipt of this NOC and understand that after expiry of this period, the company shall not be liable and I shall not claim anything from the company.”

In such scenario, now after lapse of about three and a half years from taking possession of unit, complainant cannot raise grievances qua alleged additional amount charged from him as he has already surrendered his rights qua unit as per his own undertaking vide NOC dated 19.12.2018. Therefore, prayer of complainant for refund of alleged excess amounts charged on account of Electrical and Fire Fighting Charges (EFFC), Miscellaneous Expenses (ME),



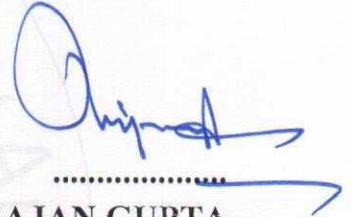
charges demanded on the pretext of increase in apartment area from 1390 sq. ft. to 1654 sq. ft., Club Membership Charges(CMC) and Car Parking Charges (VPK) is not maintainable at this belated stage and thus stands **dismissed**. Complainant is also seeking registration of unit in his favour after completion of the tower in which his unit is situated. Learned counsel for respondent has admitted that respondent has filed an application for grant of Occupation Certificate on 09.05.2014 and same is still pending before concerned department. Thus, Occupation Certificate is yet to be received by respondent. Authority is of the considered view that there is no bar on execution of conveyance deed in favour of an allottee. The complainant has paid full consideration. As such property of the unit in question has already passed on to the complainant. Possession has also been delivered. Now, at this stage execution of conveyance deed is nothing but updating of records regarding transfer of property having already taken place. Therefore, respondent is directed to execute conveyance deed of the unit in favour of the complainant.

4. Complainant has also raised additional grievances regarding lack of infrastructural facilities in 'Tuscan City Phase-1'. He has stated that respondent has failed in providing infrastructural facilities like permanent electricity connection, sewage treatment plant, water treatment plant, two fully operational lifts in tower, maintenance and security etc. With regard to aforesaid grievances related to lack of basic infrastructural facilities in the project, complainant is



granted liberty to file a fresh complaint. Complainant along with other similar allottees or through their concerned RWA may file afresh complaint for adjudication of their common grievances regarding lack of basic infrastructural facilities in said project.

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



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**RAJAN GUPTA**  
**[CHAIRMAN]**



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**DILBAG SINGH SIHAG**  
**[MEMBER]**