



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 1109 OF 2021

Shashi Sharma

...COMPLAINANT/S

VERSUS

TDI Infrastructure Ltd.

...RESPONDENT/S

**Date of Hearing:** 28.06.2022

**Hearing:** 7<sup>th</sup>

**Present:** Mr. Parveen Garg, Ld. Counsel for the complainant through VC.

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

### ORDER (RAJAN GUPTA-CHAIRMAN)

1. Case of the complainant is that complainant had booked a flat in the project named "Tuscan City" of the respondent at Sonipat on 28.01.2011. Flat No. T-10/0702, measuring 1080 sq. fts. was allotted to complainant. Builder Buyer Agreement (hereinafter referred to as BBA) was executed between parties on 22.07.2011. 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 on 22.01.2014.

Complainant has paid about Rs. 27,07,444/- till date against basic sale consideration of Rs. 21,33,000/-.


Learned counsel for complainant stated that grouse of the complainant is that till the year 2018 no offer to deliver unit was made by respondent to complainant. It was only after inordinate delay of about eight years from the deemed date of delivery, that respondent offered fit out possession of her unit vide letter dated 11.09.2018, that too without obtaining Occupation Certificate. Failure on the part of respondent to deliver lawful possession of unit even after huge delay of about eleven years from date of initial booking in the year 2011 has frustrated the very purpose of booking the unit. The offer for fit out possession dated 11.09.2018 is sans Occupation Certificate, therefore, complainant cannot be compelled to wait for indefinite period to get possession of the unit. Therefore, on account of multiple defaults by respondent, complainant is seeking refund of Rs. 27,07,444/- along with interest as per Rule 15 of the HRERA, Rules 2017.

2. Learned counsel for respondent while admitting the payments made by complainant stated that respondent had applied for grant of Occupation Certificate on 09.05.2014 but same has not been granted by Department of Town & Country Planning. He stated that respondent had issued offer for fit out letter on 11.09.2018 but complainant has not come forward to take possession of the flat.

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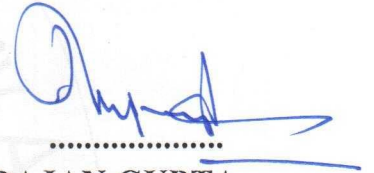
3. After hearing both parties and perusal of records of the case, Authority observes that since offer for fit out possession dated 11.09.2018 is without Occupation Certificate, therefore, it could not be termed a proper and legal offer of possession. It is assumed that the application filed for issuance of Occupation Certificate vide letter dated 09.05.2014 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. Further, inordinate delay of eleven years has already been caused which defeats the purpose of booking an apartment. Respondent has been using the amount deposited by complainant for the last eleven years without any justification. In such circumstances, complainant cannot be compelled to wait for indefinite period to get possession of the unit. Purpose of buying the unit has got totally frustrated due to inordinate delay. Therefore, on account of multiple defaults by respondent, Authority finds it to be a fit case for allowing refund of the amount paid by the complainant and directs the respondent to refund Rs. 27,07,444/- paid by the complainant 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.

4. As per calculations made by Accounts Branch, amount payable by the respondent to the complainant along with interest has been worked out to Rs.



49,26,968/- ( Rs. 27,07,444/- + Rs. 22,19,524/-). Therefore, Authority directs the respondent to refund **Rs. 49,26,968/-** to complainant.

5. Respondent shall pay the entire amount to the complainant within 90 days of uploading this order on the web portal of the Authority. **Disposed of** in these terms. File be consigned to the record room and order be uploaded on website of Authority.



RAJAN GUPTA  
[CHAIRMAN]



DILBAG SINGH SIHAG  
[MEMBER]