



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1464 OF 2021

Somnath

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 08.07.2022

Hearing: 3rd

Present: - Mr. Somnath, complainant and Mr. Deepak Kumar, son of the complainant.

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

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. While initiating arguments, learned counsel for the complainant stated that complainant had booked a flat in the project named 'ESPANIA FLOORS-KEF', of the respondent situated in Sonapat on 24.09.2011. Flat No. EF-64/FF, measuring 1224 sq. ft. was allotted to the complainant vide allotment letter dated 19.01.2012. Builder Buyer Agreement (hereinafter referred to as

BBA) was executed between parties on 02.07.2012. 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 02.01.2015. Complainant has paid Rs. 24,73,732/- till date against basic sale consideration of Rs. 23,00,006/-.

Main grouse of the complainant is that after a delay of about six and a half years from the deemed date of delivery, respondent has offered him fit out possession on 19.07.2021 along with additional demands amounting to Rs. 07,01,046/- and sans Occupation Certificate. He is further aggrieved on the ground that respondent vide aforesaid offer letter informed her about unilateral increase in super area from 1224 sq. ft. to 1398 sq. ft. i.e. by 174 sq. fts. which has put additional financial burden on him. Learned counsel for the complainant states that such a huge increase in super area of flat is unjustified and unreasonable, 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. 607 of 2018 titled Vivek Kadyan Versus M/s TDI Infrastructure Pvt. Ltd. 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. till receipt of Occupation Certificate.

Complainant has also impugned all demands made by the respondent vide said offer letter against following components: (a) Charges demanded on the pretext of increase in apartment area (b) Miscellaneous



Expenses (ME) Rs. 11,800/- (c) Interest Free Maintenance Security (SEC) Rs. 20,000/- (d) (e) Club Membership Charges(CMC) Rs. 50,000/- demanded as club charges as there is no club is in existence. Complainant has requested for quashing of these additional charges.

2. On the other hand, learned counsel for the respondent has admitted to receive Rs. 24,73,732/- from the complainant as per latest statement of accounts dated 16.05.2022 annexed with their reply as Annexure - R/6 (page-36). Learned counsel for the respondent has apprised the Authority that respondent had filed an application for grant of occupation certificate on 12.09.2016 but the same was dismissed by Director, Town & Country Planning Department, Haryana vide order dated 30.05.2018. Further an appeal was filed by the respondent against said order but the same was dismissed on 26.09.2019 on account of non-prosecution. Presently, a fresh application for grant of Occupation Certificate has been filed on 17.02.2022 before Town & Country Planning Department, Haryana. Further, respondent had issued said offer letter on 19.07.2021 but complainant has not come forward to take possession of the flat till date, therefore, allotment of flat was provisionally cancelled vide letter dated 29.10.2021.

3. After hearing both parties and perusal of records of the case, Authority observes that since offer for fit out possession dated 19.07.2021 is sans Occupation Certificate, therefore, it could not be termed a proper and legal offer

of possession. Respondent had filed first application for grant of occupation certificate on 12.09.2016 but the same was dismissed by Director, Town & Country Planning Department, Haryana vide order dated 30.05.2018. Even the appeal against said order was dismissed on 26.09.2019 on account of non-prosecution. Presently, a second application for grant of Occupation Certificate has been filed on 17.02.2022 before Town & Country Planning Department, Haryana. Thus, it is assumed that the application for issuance of Occupation Certificate vide letter dated 12.02.2016 filed by the respondent promoter was defective and the same was dismissed by the Department of Town & Country Planning. Now, grant of Occupation Certificate on second application filed by respondent might take some time. In these circumstances, it is concluded that a proper and lawful offer of possession is yet to be made. In the absence of a proper and legal offer of possession, cancellation of allotment of flat by the respondent vide letter 29.10.2021 on account of complainant not coming forward to take possession on payment of outstanding amount is held to be void and cancellation letter dated 29.10.2021 stands quashed. 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 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.

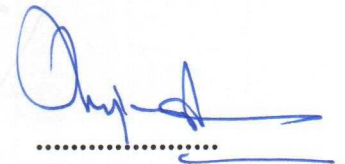
4. Respondent vide Annexure R-6 of his reply has admitted that complainant has paid total amount of Rs 24,73,732/- which includes the amount of Rs. 3,19,709/- towards EDC/IDC and Rs. 22,676/- for VAT. The amount of EDC/IDC and VAT is collected by the promoter for payment to the department/authorities 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. The delay interest accordingly deserves to be calculated only on amount of Rs. 21,31,347/- (Rs 24,73,732- Rs. 3,19,709/- – Rs 22,676/-).

5. 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 unit up to the date of passing of this order has been worked out to Rs. 15,54,803/- . Authority orders that upfront payment of Rs.15,54,803/- will be made to the complainant on account of delay caused in offering possession within 90 days and further monthly interest @ Rs. 17,228/- will be paid to the



complainant by the respondent w.e.f. 08.07.2022 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 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]