



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 719 OF 2019

Kamal Dhamija

....COMPLAINANTS

& Mrs. Rakhi Dhamija

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

### COMPLAINT NO. 1201 OF 2019

Suman Deep Singh

....COMPLAINANT

VERSUS

TDI Infrastructure Pvt. Ltd.

....RESPONDENT

### COMPLAINT NO. 1024 OF 2019

Mohit Jaggi

...COMPLAINANT

VERSUS

M/s TDI Infrastructure Ltd.

....RESPONDENT

**CORAM: Rajan Gupta**

**Chairman**

**Dilbag Singh Sihag**

**Member**

**Date of Hearing: 08.07.2022**

**Hearing:** 11<sup>th</sup> in Complaint No. 1201-2019.

8<sup>th</sup> in Complaint No. 1024-2019.

8<sup>th</sup> in Complaint No. 719-2019.

**Present:** - Mr. Roopak Bansal, Ld. Counsel for the complainants through VC and Complainant Mr. Kamal Dhamija.  
(in Complaint No. 719-2019)  
Mr. Ripudaman Singh, Ld. Counsel for the complainant.  
(in Complaint No. 1024-2019)  
Mr. Satish Mishra, Ld. Counsel for the complainant.  
(in Complaint No. 1201-2019)  
Mr. Shubhnit Hans, Ld. Counsel for the respondent.

**ORDER (DILBAG SINGH SIHAG - MEMBER)**

1. All the complaints are being disposed of through this common order on the ground that core issue involved in all cases are identical. Moreover, all these cases pertain to the same project of the respondent i.e. ‘Espania -1’ at Sonapat. These cases are disposed of in view of the facts of lead **Complaint case no. 719 of 2019 Kamal Dhamija and Rakhi Dhamija vs TDI Infrastructure Pvt. Ltd.** Written submissions of both parties as well as arguments advanced by them were recorded in order dated 17.05.2022. Relevant part of order dated 17.05.2022 is reproduced as below:

“1. The captioned complaints are being heard together and a common order is being passed on the ground that core issue involved in all cases are identical. All these cases pertain to the same project of the respondent i.e. ‘Espania -1’ Sonapat. This order is being passed keeping in view facts of lead

Complaint case no. 719 of 2019 Kamal Dhamija and Rakhi Dhamija vs TDI Infrastructure Pvt. Ltd.

2. On the last date of hearing, after perusal of record and hearing both the parties, Authority had passed a detailed order dated 24.03.2022. Vide said order Authority had directed respondent to prove by way of photographs as well as documentary evidence that unit is ready for delivery along with Occupation Certificate; to file status of Occupation Certificate specifically qua unit of complainants. Relevant part of aforementioned order dated 24.03.2022 is reproduced below:

“4. Initiating his pleadings, learned counsel for the complainant submitted that complainants had booked a unit in the project named “Espania Heights” of the respondent situated at Sonepat in Nov, 2012. Flat No. EH-04/1404 measuring 1390 sq. fts. was allotted to complainants. Flat Buyer Agreement (hereinafter referred to as FBA) was executed between parties on 01.12.2012. As per FBA, delivery of apartment was to be made within 30 months from the date of agreement, thus deemed date of delivery was on 23.04.2015. Complainants has paid Rs. 33,16,225/- against total sale consideration of Rs. 31,15,817/- till date.

Grouse of the complainants is that respondent had offered them fit out possession on 04.01.2019 along with a demand of Rs. 7,36,929/-, after a delay of approximately four years from the deemed date of delivery. Said offer is also sans Occupation Certificate. They are further aggrieved on the ground that respondent vide aforesaid offer letter informed them about unilateral increase in super area from 1390 sq. ft. to 1598 sq. ft. i.e. by 208 sq. fts. which has put additional financial burden on them. Ld. counsel for the complainants further stated that such a huge increase in super area of floor is unreasonable and unjustified. Therefore, on account of multiple defaults by the respondent, complainants have sought refund of Rs. 33,16,225/- along with interest as per Rule 15 of the HRERA, Rules 2017.

5. In response, learned counsel for the respondent has apprised the Authority that they 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 filed by respondent against said order was dismissed on 26.09.2019 on account of non-prosecution. Presently, a fresh application for grant of Occupation Certificate has been filed before Town & Country Planning Department, Haryana. Learned counsel for the respondent further stated that construction of unit is almost complete and ready for delivery. He stated that respondent will either offer possession of unit to the complainants along Occupation Certificate or settle the matter amicably by next date of hearing.

6. After hearing arguments of both the parties and perusal of record, Authority observes that respondent had offered fit out possession of the unit to the complainants on 04.01.2019 sans Occupation Certificate after delay of approximately four years from the due date of delivery. Said offer letter is also accompanied with additional demand of Rs. 7,36,929/-. Respondent has also increased area of unit from 1390 to 1598 sq. fts. thereby increasing cost of the unit. Complainants have stated that they are unable to pay aforesaid additional demand. Already extraordinary delay has been caused by the respondent to complete and deliver the unit to the complainants. Respondent has been using the amount deposited by complainants for last seven years without any reasonable justification. Now, respondent has raised additional demand of Rs. 7,36,929/-. Respondent cannot unilaterally increase area as well as cost of the unit by raising additional demands.

In such circumstances, respondent is granted an opportunity to prove by way of photographs as well as documentary evidence that unit is ready for delivery along with Occupation Certificate. Respondent is directed to call complainants for site visit to ascertain present status of completion of the unit and file photographs as well as necessary

documentary evidence of the unit at least two weeks before next date of hearing. Respondent shall establish that unit fit and ready for usage. He shall file status of Occupation Certificate specifically qua unit of complainants. All aforesaid information shall be filed within two weeks with an advance copy to the complainants.

7. In case, respondent fails to establish that the unit is complete and fit for usage along with Occupation Certificate, the Authority will consider the present case to be a fit case for allowing refund of the amount paid by the complainants and will proceed to grant refund of the amount paid to the complainants 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 the order on the next date of hearing.

8. Complainants are also at liberty to file latest photographs showing current stage of completion of his unit with an advance copy to the respondent.”

3. Learned counsel for respondent at the outset sought more time to place on record documents as well as photographs of units in compliance of directions given to him vide order dated 24.03.2022. He apprised the Court today that respondent has filed a fresh application for grant of Occupation Certificate on 17.02.2022 and he is in the process of removing objections and completing all formalities for grant of Occupation Certificate. He sought some time to place on record aforesaid fresh application for grant of Occupation Certificate dated 17.02.2022 along with objections raised by the concerned department. He further stated that units of all the complainants are complete except internal finishing and they will be handed over their units within few months after receipt of Occupation Certificate from the department concerned. Learned counsel for respondent has filed reply today in Complaint No. 1024-2019. Copy be sent to the complainant.

4. After perusal of the record, Authority observes that respondent has failed to file documents as well as photographs of units in compliance of directions given to him vide order

dated 24.03.2022. On request of learned counsel for the respondent, last opportunity is granted to the respondent to prove by way of affidavit along with photographs and documents corroborating his statement that units of complainants are complete in all respects for handing over of possession to complainants. He shall also satisfy the Court as well as the complainants that fresh application filed by him for grant of Occupation Certificate dated 17.02.2022 is likely to be allowed and Occupation Certificate will be granted to him soon. All aforesaid information shall be filed within two weeks with an advance copy to the complainants.

5. In case, respondent fails to establish that units are complete and fit for usage and that his fresh application for grant of Occupation Certificate will succeed, and he will be in a position to hand over possession of units to complainants along with Occupation Certificate within agreed time upon by the complainants, the Authority will consider the present cases to be fit cases for allowing refund of the amount paid by the complainants and will proceed to grant refund of the amount paid to the complainants 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 the order on the next date of hearing.

2. Learned counsel for the respondent has furnished information in compliance of orders dated 17.05.2022 in Complaint No. 719-2019, by way of application in the Court today. Same is taken on record. Copy of said documents have been supplied to the complainants by the respondent. Respondent has admitted to receive Rs. 33,20,428/- from the complainant as per latest statement of accounts dated 27.04.2019 annexed with their reply as Annexure - R/7 (page-28).

3. After hearing both parties and perusal of records of the case, Authority observes that respondent has utterly failed to perform his contractual liabilities. Due date of delivery of apartment was in the year 2014. Now, after an extraordinary delay of over eight years, offer for fit out possession dated 04.01.2019 has been sent to the complainants and that too without obtaining Occupation Certificate. Therefore, it could not be termed a proper and legal offer of possession. The fate of the project is uncertain as respondent has admitted that the application filed by him for grant of Occupation Certificate on 12.09.2016 was dismissed by the concerned department.

A fresh application for grant of Occupation Certificate has again been filed by respondent on 17.02.2022. Information placed by the respondent before Authority today vide Application dated 07.07.2022, merely shows that respondent has submitted building plans and completion plans for comments of Public Health Services etc. which is a standard process/steps taken by the Department of Town & Country Planning after filing of second application for grant of Occupation Certificate by the respondent. Receipt of Occupation Certificate on this second application cannot also be guaranteed by the respondent. Even if Authority presumes that respondent has now complied with all formalities, obtained all necessary sanctions etc. from various



departments, issuance of Occupation Certificate might take considerable time which in turn will delay delivery of possession to the complainants.

Further, complainants have apprised the Authority that they have bought another flat, since respondent have failed to deliver allotted flat in agreed time. Thus, the very purpose of contract with the respondent for buying the unit has got totally frustrated. In such scenario, on account of multiple defaults by the respondent, complainants are entitled to refund of Rs. 33,20,428/- along with interest. Therefore, Authority finds it to be a fit case for allowing refund of the amount paid by the complainants and directs the respondent to refund Rs. 33,20,428/- paid by the complainants 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 details of amount paid by complainant attached at page no. 36 of the complaint and Annexure R-7 of reply filed by respondent complainant has paid total amount of Rs. 33,20,428/-. Thus, as per calculations made by Accounts Branch, amount payable by the respondent to the complainants along with interest has been worked out to Rs. 60,03,110/- (Rs. 33,20,428/- + Rs. 26,82,682/-). Therefore, Authority directs the respondent to refund Rs. 60,03,110/-.

5. In Complaint No. 1024 of 2019, as per calculations made by Accounts Branch, amount payable by the respondent to the complainant along

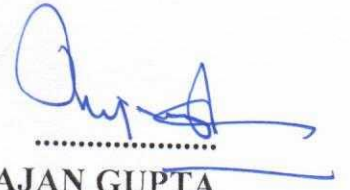


with interest has been worked out to Rs. 46,60,355/- ( Rs. 23,96,727/- + Rs.22,63,628/-). Therefore, Authority directs the respondent to refund Rs. 46,60,355/-.

6. In Complaint No. 1201 of 2019, as per calculations made by Accounts Branch, amount payable by the respondent to the complainant along with interest has been worked out to Rs. 45,03,103/- ( Rs. 25,01,107/- + Rs.20,01,996/-). Therefore, Authority directs the respondent to refund Rs. 45,03,103/-.

7. Respondent shall pay the entire amount to the complainants within 90 days of uploading this order on the web portal of the Authority.

**Disposed of** in these terms. Files be consigned to the record room and the orders be uploaded on the website of the Authority.



RAJAN GUPTA  
[CHAIRMAN]



DILBAG SINGH SIHAG  
[MEMBER]