



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	469 of 2022
Date of filing.:	19.03.2022
First date of hearing.:	10.05.2022
Date of decision.:	15.12.2022

### 1. COMPLAINT NO. 469 OF 2022

Krishan Dutt  
H. NO 1184/8, Ward-30, Vijay Nagar, Sonapat

....COMPLAINANT

VERSUS

TDI Infrastructure Ltd.  
Vandana Building, Upper Ground Floor,  
11, Tolstoy Marg, Connaught Palace

....RESPONDENT

### 2. COMPLAINT NO. 470 OF 2022

Nirmala Sharma  
H. NO 1184/8, Ward-30, Vijay Nagar, Sonapat

....COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

*G. Rastogi*

**3. COMPLAINT NO. 758 OF 2022**

Pooja Rana  
H.no 989, Sector 15, Sonapat  
Haryana-131001

....COMPLAINANT

VERSUS

TDI Infrastructure Ltd.  
Vandana Building, Upper Ground Floor,  
11, Tolstoy Marg, Connaught Palace

....RESPONDENT

**CORAM:**            **Dr. Geeta Rathee Singh**            **Member**  
                                 **Nadim Akhtar**                                    **Member**

**Date of Hearing:** 15.12.2022

**Hearing:**                    3rd (in all complaints)

**Present: -**            Mr. Vikas Deep, Ld. Counsel for complainants  
                                 through VC.  
                                 Mr. Shubhnit Hans, Ld. Counsel for respondent.

**ORDER (DR. GEETA RATHEE SINGH-MEMBER)**

1. Present complaints have been filed by complainants in Form CRA under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and

Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

#### A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of the project.	Espania Floor, Sonapat
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Unregistered
4.	Details of unit.	RF 66/SF, area 1224 sq.ft.
5.	Date of Builder buyer agreement	None
6.	Due date of possession	Not mentioned
7.	Basic sale consideration	₹. 25,00,000/-
8.	Amount paid by complainant	₹ 26,89,701/-
9.	Offer of possession.	None

**B.FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED  
BY THE COMPLAINANT**

3. Facts of captioned complaints are similar and they pertain to the same project of the respondent namely "Espania Floor" situated at Sonapat. Captioned complaints, therefore, have been taken up together for disposal. Facts of complaint no. 469 of 2022 titled as Krishan Dutt versus M/s TDI Infrastructure Ltd. are being taken into consideration by treating it as lead case
4. That the respondent is a coloniser, engaged in the business of real estate development. The respondent invited bookings of floors in its forthcoming colony i.e. 'Espania Floor', at NH-1, Sonapat.
5. That accordingly, on the representation that the project shall be completed within 30 months from the date of booking, the complainant, in their joint names, at Basic Sales Price (BSP) of Rs. 25,00,000/-, got booked a residential built-up floors in project of respondent at 'Espania Royale Floors', at NH-1, Sonapat, having approx. area as 1224 Sq.Feet, by depositing initial amount of Rs.3,50,000/-, vide Registration Form dated 27/02/2012. The Receipt was issued on 27/03/2012. Copies of Registration Form dated 27/02/2012 and Receipt dated 27/03/2012 are annexed as Annexure- C/1 and C/2, respectively in the complaint file.

6. That the respondent got signed certain documents which were not provided to the complainant. The copy of agreement was also not provided, if so got signed and executed by the complainant.
7. That the Unit No. RF-66/S/F, Second Floor having area of 1224 sq.feet, in 'Espania Royale Floor', at NH-1, Sonapat was allotted in joint name of complainant. The complainant had further deposited the amount as and when demanded by the respondent. The complainant, on the demand of respondent, deposited the total amount as mentioned in detail at page 3 of the complaint file.
8. That in total, the complainant had deposited an amount of Rs.26,89,701/-.The complainant had deposited a huge amount, as is evident from the Statement of Account, issued by the respondent, annexed as Annexure-C/3 of the complaint file.
9. That initially at the time of booking, it was strongly assured by the officials of respondent that the possession of the floor will certainly be given within 30 months of the booking after doing all the development works and obtaining the completion certificate in respect to the relevant colony.
10. That the respondent issued Final Statement of Account dated 11/03/2022 (Annexure-C/4) stipulating that the area of unit in question is increased from declared area of 1224 sq.feet to 1456.56sq. feet, an

increase of 232.56sqfeet ie. about 20%. Accordingly the demand was calculated on the basis of such alleged enhanced area as well as other charges which are neither agreed nor statutory. Even the interest amount was also shown as due. It is worth mentioning that by this time, the respondent has not stated the status of mandatory Occupation Certificate.

11. That the alleged increase in area is totally illegal and not sustainable. The complainant craves indulgence of the Hon'ble Authority to the facts i.e.
- a) the respondent has not stated that there is a change of site plan as if there is any increase in area, there might be revision / change in site plan and the revised site plan requires sanctioning from the Appropriate Authority;
  - b) The area of the unit was declared in the Allotment Letter and later on in the Flat Buyer Agreement;
  - c) No consent for change of plan of extension of balcony or any other area was ever taken by the builder from the Unit holders;
  - d) the builder never intimated that area is enhanced so it cannot be a sudden incident that area is enhanced by the builder;

e) the conduct and facts evidences that the builder had given no such information to statutory authority that area is increased, no plan of the colony was got revived or changed, so it is impossible that the area is enhanced, when the sanction plan remains the same;

f) The builder even failed to show any demand of fee or other charges by the statutory authority on account of alleged enhanced area. If area is enhanced, then definitely the plans were required to be revived and additional fees is demanded by the authorities, for such enhanced area;

g) The builder has also imposed the EDC over this enhanced area while it did not produce that the EDC is demanded by the authorities. When there is no area enhanced and no site plans were revived, there was no occasion upon the statutory authority to raise the EDC demand. It shows that the area is not enhanced, as alleged. But the builder has demanded such EDC which is completely illegal. If there is no demand of EDC for such alleged enhanced area by the statutory authority, how the builder can allege that the area is enhanced;

h) The site plan not produced or supplied to shows that the ground coverage is increased, so increased in area of Unit is not possible.

12. That it is hereby submitted that the respondent itself failed to develop the colony and delayed considerably as the respondent is not in a position to offer the possession for such a long time. The respondent

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even failed to give status of mandatory Occupation / Completion Certificate, which is mandatory, prior to offer of possession.

13. That the respondent is authorised to collect actual EDC to be deposited with the Govt. of Haryana. The respondent has never provided the account in respect to EDC, which was being collected by respondent from various customers and deposited by the respondent with the Govt. of Haryana. It is reasonable apprehension that the respondent is collecting much more amount on account of EDC from the customers than the actual amount due. In this way, it is very much possible that the respondent is mis-appropriating the amount of customers, including the complainant.

### C. RELIEF SOUGHT

14. That the complainant seek the following relief and directions to the respondent:-

- i) That the possession of unit be handed over and also the Conveyance Deed for the same be registered, after obtaining the Occupation /Completion Certificate;
- ii) To pay the statutory delay compensation, in terms of Rule 15, over the delayed period, till actual possession and Conveyance Deed;

- iii) To remove the illegal charges;
- iv) To remove the payment, as shown as due in the statement of account, towards alleged increase in area of Unit;
- v) Any other order, in favour of complainant and against the respondent, as deemed fit and proper.

#### **D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

Learned counsel for the respondent filed detailed reply on 08.04.2022 pleading therein:

15. That it is denied that the Respondent is a colonizer, engaged in the business of real estate development. It is denied that the Respondent invited bookings of floors in its forthcoming colony i.e. 'Espania Floor', at NH-1, Sonapat. It is submitted that due to the reputation and prestige of the Respondent Company, the Complainant had voluntarily invested in the project of the Respondent Company.
16. That it is denied that on the representation that the project shall be completed within 30 months from the date of booking. The Complainant, in their joint names, at Basic Sales Price (BSP) of Rs.25,00,000/-, got booked a residential built-up floor in project of Respondent at 'Espania Royale Floors', at NH-1, Sonapat, having approx. area as 1224 Sq.Feet, by depositing initial amount of Rs.3,50,000/-, vide Registration Form

dated 27/02/2012. It is submitted that the handing over of the possession has always been tentative and subject to force majeure conditions and the Complainant was well aware of the same. Further, the amount paid by the Complainant is not denied, however, any amount inconsistent with the statement of account issued by the Respondent Company is denied. Copy of the Statement of Account is being annexed herewith and marked as ANNEXURE R-6.

17. That it is denied that the Respondent got signed certain documents which were not provided to the Complainant. It is denied that the copy of agreement was also not provided, if so got signed and executed by the Complainant. No documentary proof has been annexed by the Complainant to prove the allegations attributed to the Respondent Company in the instant para.

18. That it is submitted that the amount paid by the Complainant is not denied, however, any amount inconsistent with the statement of account issued by the Respondent Company is denied. It is also submitted that there has always been delay in making the payment on the part of the Complainant and various reminder letters have been sent to the Complainant to clear the dues.

19. That it is stated that any amount inconsistent with the statement of account issued by the Respondent Company is denied.

20. That it is denied that initially at the time of booking, it was strongly assured by the officials of Respondent that the possession of the floor will certainly be given within 30 months of the booking after doing all the development works and obtaining the completion certificate in respect to the relevant colony. It is submitted that the handing over of the possession has always been tentative and subject to force majeure conditions and the Complainant was well aware of the same. In any case, the same has now been offered vide letter dated 03.04.2021.
21. That it is denied that the respondent issued Final Statement of Account dated 11/03/2022 (Annexure-C/4) stipulating that the area of Unit in question is increased from declared area of 1224 sq. feet to 1456.56 sq. feet, an increase of 232.56sq. feet i.e. about 20%. It is submitted that the final super area of the unit has always been tentative and subject to change till the construction of the said building is complete and Occupation Certificate is granted by the competent Authority. It is denied that the demand was calculated on basis of such alleged enhanced area as well as other charges which are neither agreed nor statutory. It is denied that even the interest amount was also shown as due. It is submitted that every demand was being raised in accordance with the agreed terms between the parties. It is denied that by this time, the Respondent has not stated the status of mandatory Occupation Certificate. It is submitted that

the Occupation certificate has already been applied and the same is awaited.

22. That it is denied that the alleged increase in area is totally illegal and not sustainable. It is denied that the Complainant craves indulgence of the Hon'ble Authority to the facts i.e.

a) It is denied that the Respondent has not stated that there is a change of site plan as if there is any increase in area, there might be revision / change in site plan and the revised site plan requires sanctioning from the Appropriate Authority,

b) It is denied that the area of the unit was declared in the Allotment Letter and later on in the Flat Buyer Agreement,

c) It is denied that no consent for change of plan of extension of balcony or any other area was ever taken by the builder from the Unit holders;

d) It is denied that the builder or changed, so it is impossible that the area is enhanced, when the sanction plan remains the same,

e) It is denied that the builder even failed to show any demand of fee or other charges by the statutory authority on account of alleged enhanced area. It is denied that if area is enhanced, then definitely the plans were required to be revived and additional fees is demanded by the authorities, for such enhanced area;

f) It is denied that the builder has also imposed the EDC over this enhanced area while it did not produce that the EDC is demanded by the authorities. It is denied that when there is no area enhanced and no site plans were revived, there was no occasion upon the statutory authority to raise the EDC demand. It is denied that the area is not enhanced, as alleged. It is denied that the builder has demanded such EDC which is complete illegal. It is denied that there is no demand of EDC for such alleged enhanced area by the statutory authority, how the builder can allege that the area is enhanced;

g) It is denied that the site plan not produced or supplied to shows that the ground coverage is increased, so increased in area of Unit is not possible.

It is submitted that all the actions taken by the Respondent Company and construction done at the site is in accordance with law and the approved plans. It is further submitted that all demands raised by the Respondent Company are in accordance with the agreed terms between the parties. The Complainant is raising false contentions in the instant paragraph without placing on record any documentary proof for the same. Further, all documents are available at the office of the Respondent Company, the Complainant may inspect the same. Therefore, the averments made by the Complainant holds no ground or basis.

23. That it is denied that the respondent itself failed to develop the colony and delayed considerably as the Respondent is not in position to offer the possession such long time. It is denied that the Respondent even failed to give status of mandatory Occupation / Completion Certificate, which is mandatory, prior to offer of possession. It is submitted that the project is ready, Occupation certificate has already been applied and the same is awaited.

24. That it is denied that the Respondent is authorised to collect actual EDC to be deposited with the Govt. of Haryana. It is denied that the Respondent has never provided the account in respect to EDC, which was being collected by Respondent from various customers and deposited by the Respondent with the Govt. of Haryana. It is denied that the reasonable apprehension that the Respondent is collecting much more amount on account of EDC from the customers than the actual amount due. In this way, it is very much possible that the Respondent is misappropriating the amount of customers, including the Complainant. All the allegations attributed to the Respondent Company, as alleged or at all, are denied. It is submitted that the Complainant is trying to defame the Respondent Company by making such false and vague allegations with the mala fide intent to gain undue monetary benefits from the Respondent Company. Further, in reply to the instant para the contents of the preliminary

submission and objections and the preceding paragraphs are being reiterated and reaffirmed herein and are not being repeated for the sake of brevity.

**E. ARGUMENTS OF LEARNED COUNSEL FOR  
COMPLAINANT AND RESPONDENT**

25. During oral arguments both parties reiterated their averments as were submitted in writing. Learned counsel for the complainants stated that the unit booked by the complainants is situated in the project namely "Espania Floor" situated in Sonipat. Facts, grievances and relief sought by complainants in captioned complaints is similar to a complaint no. 1131 of 2020 titled "Sneh Lata Vs TDI Infrastructure Ltd" which has been decided by the Authority vide order dated 08.04.2021 granting relief of possession of flat till respondent offers possession after obtaining Occupation Certificate along with payment of delay interest for delay caused in offering possession. Learned counsel requested the Authority that since the facts and grievances involved are identical present bunch of complaints be allowed in similar manner and respondent be directed to handover possession of booked unit after obtaining occupation certificate and upfront payment of delay interest on account of delay in delivery of possession and not to raise demands on the pretext of increased area of flat. Learned counsel for the respondent stated that the project in question

is ready for delivery of possession and respondent has filed an application for grant of occupation certificate on 31.03.2017 but the same is awaited from the concerned department till date. As far as increase in super area of the flat is concerned, respondent's plea is that the area at the time of booking was tentatively given as 1224 sq. fts. but after completion of the building raised as per sanctioned plan, said area has been increased to 1456.56 sq. fts. So, complainant is liable to pay for the increased area in terms of agreement entered between the parties.

#### **F. ISSUES FOR ADJUDICATION**

26. Whether the complainants are entitled to relief of delay interest for delay caused in delivery of possession as per terms of Section 18 of Act of 2016?
27. Whether complainant is entitled to pay for charges on account of increased area of the booked unit?

#### **G. OBSERVATIONS AND DECISION OF THE AUTHORITY**

28. The Authority has gone through the rival contentions. In light of the background of the matter as raptured in this order and also the arguments submitted by both parties, the Authority observes that it has already allowed relief of possession along with payment of delay interest in an earlier Complaint no. 1131 of 2020 decided on 08.04.2021 titled "Sneh

Lata Vs TDI Infrastructure Ltd” and also the learned counsel for the complainant is seeking disposal of present bunch of cases in similar terms since facts and grievances involved are identical. Therefore, in view of the observations already observes and recorded in Complaint no. 1131 of 2020, Authority deems it fit to dispose of present bunch of cases in same terms.

In present bunch of complaint cases, complainants wish to wait for for a legally valid handover of possession i.e. along with Occupation Certificate subject to upfront payment of interest amount for delay caused in delivery of possession from deemed date of possession till a legally valid offer of possession is made.

29. Authority has got calculated the delay interest payable to the complainants from deemed date of possession till date of order i.e 15.12.2022 and further monthly interest till a fresh offer of possession s made after obtaining occupation certificate at the rate 10.60% is depicted in table below:

S.no	Complaint No.	Paid amount	Interest accrued till 15.12.022	Monthly Interest
1.	469-2022	₹ 22,55,455/-	₹ 18,55,666/-	₹ 20,305/-
2.	470-2022	₹ 17,55,000/-	₹ 14,75,271/-	₹ 15,800/-
3.	758-2022	₹ 18,65,277/-	₹ 14,93,515/-	₹ 16,793/-

30. Delay interest mentioned in aforesaid paragraph has been calculated on total paid amount worked out after deducting charges of taxes paid by complainant on account of Service tax and EDC . The amount of such taxes is not payable to the builder, rather required to be passed on by the builder to the concerned revenue department/authorities. If a builder does not pass on this amount to the concerned department, interest thereon becomes payable only to the department concerned and builder for such default of non-passing of amount to the concerned department will himself be liable to bear the burden of interest. In other words, it can be said that the amount of taxes collected by a builder cannot be considered a factor for determining the interest payable to the allottee towards delay in delivery of possession

31. Further, the amount of interest has been calculated from deemed date of possession till date of order i.e 15.12.2022. In complaint no, 469 of 2022 & 758 of 2022 no builder buyer has been executed between the parties. Authority observes that in absence of builder buyer agreement it cannot rightly ascertain as to when the possession of said plot was due to be given to the complainant. In Appeal no 273 of 2019 titled as TDI Infrastructure Ltd Vs Manju Arya, Hon'ble Tribunal has referred to observation of Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s

Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr.

in which it has been observed that period of 3 years is reasonable time.

32. In complaint no. 469 of 2022 , no buyers agreement or allotment letter has been issued in favour of the complainant. The complainant had booked the unit on 27.01.2012 and taking a period of 3 years from the date of booking the deemed date of possession works out to 27.02.2015. In this way, the possession of the unit should have been handed over to the complainant by February 2015.

33. In complaint no. 758 of 2022, no buyers agreement or allotment letter has been issued in favour of the complainant. The complainant had booked the unit on 01.09.2011 and taking a period of 3 years from the date of booking the deemed date of possession works out to 01.09.2014. In this way, the possession of the unit should have been handed over to the complainant by September 2014.

**H. DIRECTIONS OF THE AUTHORITY**

34. Respondent is directed to make upfront payment of delay interest to the complainants as depicted above as per provisions of Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 and further payment of monthly interest till a legally valid offer of possession is made to the complainants. Respondent will issue a fresh legal offer for possession of booked unit after obtaining Occupation Certificate. Said

offer letter shall be accompanied with statement of accounts showing lawful payables and receivables along with justification. Respondent while issuing such statement shall follow the principles laid down by the Authority. Complainant shall be entitled to delay interest on account of delay in delivery of possession from deemed date of possession till a legally valid possession will be offered after obtaining Occupation Certificate from department concerned.

35. Complaints are, accordingly, **disposed of**. Files be consigned to the record room and order be uploaded on the website of the Authority.

  
.....  
**DR. GEETA RATHEE SINGH**  
[MEMBER]

  
.....  
**NADIM AKHTAR**  
[MEMBER]