



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 718 OF 2021

(Re-opened for Rectification Application)

Surender Singh

....COMPLAINANT

VERSUS

TDI Infrastructure Limited.

....RESPONDENT

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

**Date of Hearing:** 24.01.2023

**Hearing:** 3rd

**Present: -** Mr.R. P Dangi, Counsel for the complainant  
Mr. Shubhnit Hans, Counsel for respondent through VC.

## ORDER (NADIM AKHTAR- MEMBER)

1. Captioned complaint was disposed of by the Authority vide order dated 03.02.2022, granting relief of payment of delay interest amounting to ₹ 12,49,992/- and further monthly interest @ ₹ 17534/- to be paid to complainant by the respondents w.e.f. 03.02.2022 till the date of receipt of Completion Certificate. Relevant part of order dated 03.02.2022 is reproduced below for reference:

“4. After hearing both parties and perusal of records of the case, Authority observes

that since offer for fit out possession dated 21.05.2021 is sans Occupation Certificate, therefore, it could not be termed a proper and legal offer of possession. It is inferred that the application filed for issuance of Occupation Certificate vide letter dated 31.03.2017 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. 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 the actual / legally valid delivery of possession of booked apartment 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 shall also be paid. Both the amounts will be worked out as per Rule 15 of the HRERA Rules, 2017.

Admittedly, complainant has paid total amount of Rs 26,94,705/- which includes the amount of Rs.4,15,411/- towards EDC/IDC and Rs. 16,790/- 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. A builder will be therefore not liable to pay delay interest to the allottee on the amounts collected for passing over to other department/authorities concerned. The delay interest accordingly deserves to be calculated only on amount of Rs 22,62,504/- (Rs 26,94,705/- – Rs.4,15,411/- – Rs 16,790/-).

Since complainant wishes to wait for delivery of possession till offer of possession after obtaining Occupation Certificate by the respondent, therefore, he shall be entitled to a further amount of delay interest till a legally valid possession is offered after obtaining Occupation Certificate from department concerned. As per calculations made by Accounts Branch, the amount payable by 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. 12,49,992/-. The Authority orders that upfront payment of Rs. 12,49,992/- will be made to complainant on account of delay caused in offering possession within 90 days and further monthly interest @ Rs. 17534/- will be paid to complainant by the respondent w.e.f. 03.02.2022 till the date a legally valid offer of possession is made.

5. ....

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

2. Thereafter, respondent filed an application for review of order dated 03.02.2022 on the ground that in the impugned order it has not been

stated that respondent is entitled to collect the outstanding dues from complainant at the time of final settlement of receivable and payable amount.

3. Upon perusal of the application filed by the respondent it is observed that the respondent is seeking amendment of the substantive part of order dated 03.02.2022 which amounts to review of the impugned order. It is pertinent to mention that under section 39 of the RERA Act of 2016, the Authority may, with a view to rectify any mistake apparent from the record, amend any order passed by it. However, proviso to section 39 further provides that the Authority shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of the RERA Act, 2016. Thus, Authority cannot review its order. Therefore, the application filed by the respondent for review of the order dated 03.02.2022 is rejected/dismissed.

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

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