



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1396 of 2022
Date of filing.:	13.06.2023
First date of hearing.:	02.08.2022
Date of decision.:	18.05.2023

### 1. COMPLAINT NO. 1396 OF 2022

Purnima Gupta w/o Vikas Gupta  
84-B, Raj Guru Nagar,  
Ludhiana, Punjab  
141012

...COMPLAINANT

VERSUS

TDI Infracorp (India) Limited.  
Upper Ground Floor, Vandana Building,  
11, Tolstoy Marg, Connaught Palace  
New Delhi- 110001

....RESPONDENT

### 2. COMPLAINT NO. 1427 OF 2022

Vikas Gupta S/o K. K. Gupta  
84-B, Raj Guru Nagar,  
Ludhiana, Punjab  
141012

....COMPLAINANT

VERSUS

TDI Infracorp (India) Limited.  
Upper Ground Floor, Vandana Building,  
11, Tolstoy Marg, Connaught Palace  
New Delhi- 110001

....RESPONDENT

*Rathore*



### A. UNIT AND PROJECT RELATED DETAILS

3. 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:tabular form:

S.No.	Particulars	Details
1.	Name of the project.	Water Side Floors, KWF, Lake Grove, TDI City, NH-1, Kundli, District Sonapat, Haryana
2.	Nature of the project.	Residential
4.	RERA Registered/not registered	Registered vide Registration no. 43 of 2017 dated 11.08.2017
5.	Details of unit.	WF-29/ Duplex, Water Side Floors, measuring 1850 sq.ft.
6.	Date of builder buyer agreement	08.08.2014
7.	Due date of possession	08.02.2017
8.	Possession Clause	“ .....However, if the possession of the Floor is delayed beyond the stipulated period of 30 months d from the date of execution hereof and the reasons of delay are solely attributable to the wilful neglect or default of the Company hen for every month of delay, the shall be entitled to a fixed monthly compensation damages/penalty quantified @ Rs.5 per square foot of the total

		super area of the Floor. The Buyer agrees that he shall neither claim nor be entitled for any further sums on account of such delay in handing over the possession of the Floor.”
9.	Total sale consideration	₹73,27,620/-
10.	Amount paid by complainant	₹ 76,82,428/-
11.	Offer of possession.	02.02.2022

#### B. FACTS OF THE COMPLAINT

4. Complainant had booked a residential flat in the project of the respondent namely 'Water Side Floors' situated at village Nangal Kalan, Sonapat on 22.03.2013 by paying an amount of ₹ 7,00,000/-. The total sale consideration of said flat was fixed at ₹ 73,27,620/-. Flat No. WF-29/Duplex, measuring 1850 sq. ft. was allotted to the complainant. Builder Buyer Agreement was executed between parties on 08.08.2014. As per clause 28 of the agreement, delivery of the flat was to be made within 30 months from the date of agreement, thus deemed date of delivery of possession was 08.02.2017. Complainant has paid Rs. 76,83,509/- till date towards booking of the flat against the total sale price of ₹ 73,27,620/-. Respondent issued an offer of possession for fit outs on 02.02.2022 after a delay of about five years from the deemed date of delivery and that too without obtaining

Occupation Certificate. It is further alleged that the project has not been completed by the respondent till date.

### **C. RELIEF SOUGHT**

5. The complainant in present complaint seeks following relief:

- (i) to direct the respondent to pay delay interest from deemed date of possession till the actual valid and legal possession.
- (ii) to direct the respondent not to charge late payment charges . or reverse any amount already charged, on the demand of possession as legal possession is yet to be offered.

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

6. Respondent in its reply submitted that the construction of the project in question has already been completed. Respondent has applied for grant of occupation certificate qua the project in question before the competent Authority. That after completion, respondent has already issued an offer of possession for fit out works dated 02.02.2022 to the complainant. As per the final statement of accounts the total cost of the flat works out to ₹ 88,88,724/- and an amount of ₹ 16,75,942/- is still payable on the part of the complainant. It is the complainant who has

failed to come forward to accept the possession and make payment of balance sale consideration. Therefore, it is submitted that the complainant is not entitled to any relief.

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

7. During course of oral hearing , learned counsel for both the parties reiterated their averments as mentioned in the complaint and reply filed therein. Learned counsel for the complainant further stated that at the time of booking complainant had opted for construction payment plan as payment method. As per the plan, last instalment along with club membership charges and other composite charges will be payable at the time of offer of possession. Complainant has already paid a total amount of ₹ 76,83,509/- till the year 2021 . Remaining amount is payable by the complainant only at the time of a valid offer of possession. Possession of the flat was to be delivered by 08.02.2017. However, till date the respondent has failed to complete the project. The offer of possession for fit out works dated 02.02.2022 cannot be called a valid offer since the respondent is yet to receive an occupation certificate. Even in its reply the respondent has failed to ascertain the status of occupation certificate. Therefore, he prayed

that direction be issued to the respondent to complete the project and issue a valid offer of possession to the complainant. Complainant may be granted relief of delay interest on account of delay caused in delivery of possession from deemed date of delivery of possession till the date a valid offer of possession issued to the complainant after completing the project along with occupation certificate.

8. Learned counsel for the respondent reiterated the grounds/ objections taken in the reply.

#### **F OBSERVATIONS OF THE AUTHORITY**

9. After hearing the submissions of both parties, Authority observes that the main grouse of the complainant is that as per builder buyer agreement possession of the flat should have been delivered by 08.02.2017. Respondent issued an offer of possession for fit out works on 02.02.2022 after a delay of five years and that too without receiving occupation certificate. It has also been alleged by the complainant that the construction of the project has yet not been completed by the respondent. On the other hand, respondent in its written submissions has submitted that construction of the project has been completed and an offer of possession has already been issued to the complainant on

02.02.2022. It is the complainant who is not coming forward to accept the possession and make payment of balance amount.

It is pertinent to mention that in its written submissions respondent has failed to apprise the Authority with regard to the current status of construction of the project and the flat booked by the complainant. Respondent has not attached any documentary proof to substantiate its claim that the project has actually been completed.

10. Admittedly there has been a delay of more than five years in delivery of possession. Even at present, respondent has not apprised the Authority with regard to the status of grant of occupation certificate. In its written submissions, respondent has submitted that construction of the project is complete without providing any documentary evidence or latest photographs of the flat in question. Mere written submissions of the respondent without documentary evidence cannot be accepted. Respondent has claimed that possession has been offered to the complainant on 02.02.2022. However, at the time of said offer of possession respondent had failed to apprise the complainant with regard to the status of construction of the booked flat and receipt of occupation certificate qua the project in question. Authority has laid a criteria as to what shall be called lawful offer/ handing over of



possession in **Complaint Case No. 903 of 2019- Sandeep Goyal Vs.**

**Omaxe Ltd.** Relevant part of the said order is reproduced below:

*“7. At this stage, the Authority would express its views regarding the concept of ‘valid offer of possession’. It is necessary to clarify this concept because after valid and lawful offer of possession liability of promoter for delayed offer of possession comes to an end and liability of allottee for paying holding charges as per agreement commences. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The Authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession of an apartment must have following components:*

*(i) Firstly, the apartment after its completion should have received occupation certificate from the department concerned certifying that all basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.*

*(ii) .....*

*(iii) .....*”

Since at the time of offer of possession, respondent had not received occupation certificate qua the project in which the flat of the complainant is situated, therefore offer of possession dated 02.02.2022

cannot be said to be a valid offer of possession in terms of principles laid down by this Authority in Complaint no. 903 of 2019. Therefore, a valid offer of possession is yet to be made to the complainant.

11. Since the complainant wishes to wait for delivery of possession of flat till respondent offers possession after obtaining occupation certificate, therefore, Authority deems it fit to issue directions to respondent to make a fresh legal offer for possession of booked flat complete in all respects after obtaining occupation certificate. Said offer letter shall be accompanied with a detailed 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 in Complaint no. 113 of 2018 titled as 'Madhu Sareen vs B.P.T.P Pvt Ltd' and in Complaint No. 607 of 2018 titled as Vivek Kadyan Vs M/s TDI Infrastructure Ltd . 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 by respondent after obtaining occupation certificate from concerned department. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

*Explanation.-For the purpose of this clause-*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

**“Rule 15:** “Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19](1) For the purpose of proviso to section 12; section 18, and sub.sections (4) and (7) of section 19, the "interest at the rate prescribed"

*shall be the State Bank of India highest marginal cost of lending rate +2%:*

*Provided that in case the State Bank of India marginal cost of lending rate (NCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public".*

12. Accordingly, respondent will liable to pay upfront delay interest to the complainant on account of delay caused in delivery of possession from deemed date of possession till a legal offer of possession after obtaining occupation certificate.
13. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date of this order i.e. 18.05.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70%.
14. Authority has got calculated the delay interest payable to the complainants from deemed date of possession till date of order i.e 18.05.2023 and further monthly interest till a fresh offer of possession is made after obtaining occupation certificate at the rate 10.70% is depicted in table below:



S. no	Complaint No.	Paid amount (in ₹)	Interest accrued till 18.05.2023 (in ₹)	Monthly Interest (in ₹)
1.	1396-2022	76,82,428/-	48,33,933/-	1,25,16,361/-
2.	1427-2022	40,04,609/-	18,59,129/-	58,63,738/-

15. In Complaint no. 1396 of 2022, complainant has claimed to have paid an amount of ₹ 76,83,509/- to the respondent. However, as per the statement of money receipt issued by respondent annexed at page 63 of the complaint file, the total paid amount works out to ₹ 76,82,428/- . Therefore, the total amount paid by the complainant for the purpose of calculation of interest is being taken as ₹ 76,82,428/- only.

16. In complaint no. 1396 of 2022 in the relief sought, complainant has also prayed that respondent not to charge late payment charges or reverse any amount already charged, on the demand of possession as legal possession is yet to be offered. It is observed that at the time of booking, complainant has opted for construction payment plan, according to which last instalment including demand on account of club membership charges and other composite charges will be payable at the time of offer of possession. Since a valid offer of possession is yet to be made, respondent cannot be allowed to raise the impugned demands from the complainant at this stage. Further delayed payment charges cannot be attached to these demands since they have been

raised prematurely and complainant has rightly abstained from making further payment. Complainant has already made payment of an amount of ₹ Rs. 76,83,509/- against sale consideration of ₹73,27,620/-. Any further demands payable on the part of complainant should be charged at the time of fresh offer of possession. In para 11 of this order respondent has been directed to issue a detailed statement of accounts showing lawful payables and receivables amounts along with justification. Respondent should abide by the principles laid in this order.

#### **G. DIRECTIONS OF THE AUTHORITY**

17.Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to issue a fresh legal offer for possession to the complainant for the booked flat complete in all respects after obtaining Occupation Certificate. Said offer letter shall be accompanied with a detailed 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.

- (ii) Respondent is directed to make upfront payment of delay interest (calculated till date of this order i.e 18.05.2023) on account of delay caused in delivery of possession and further payment of monthly interest till the date a valid offer of possession is issued to the complainant. A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

18. The complaints are, accordingly, **disposed of**. Files be consigned to the record room after uploading order on the website of the Authority

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

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