

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.726 of 2022

Date of Decision: 25.03.2025

Kuldeep Singh, T-04, Flat No. 904, TDI Tuscan City, Behind
TDI Mall, Kundli, Sonipat

Appellant.

Versus

TDI Infrastructures Ltd., Vandna Building, 11, Upper Ground
Floor, Tolstoy Marg, Connaught Place, New Delhi

Respondent

Present: Mr. Sushil Kumar, Advocate for the appellant.
Mr. Shubhnit Hans, Advocate for the respondent.

CORAM:

Justice Rajan Gupta
Rakesh Manocha

Chairman
Member (Technical)

O R D E R:

RAJAN GUPTA, CHAIRMAN (ORAL):

Present appeal is directed against the order dated
04.08.2022, passed by Authority¹. Operative part thereof
reads as under:

*“4. Complainant is also seeking registration of unit in
his favour after completion of the tower in which his
unit is situated. Learned counsel for respondent has
admitted that respondent has filed an application for
grant of Occupation Certificate on 09.05.2014 and
same is still pending before concerned department.
Thus, Occupation Certificate is yet to be received by
respondent. Authority is of the considered view that
there is no bar on execution of conveyance deed in
favour of an allottee if complainant so desires and*

¹ Haryana Real Estate Regulatory Authority, Panchkula

respondent has no objection. The complainant has already paid full consideration. As such property of the unit in question has already passed on to the complainant. Possession has also been delivered. Now, at this stage execution of conveyance deed is nothing but updating of records regarding transfer of property having already taken place. Therefore, respondent is directed to execute conveyance deed of the unit in favour of the complainant.

5. Complainant has also raised additional grievances regarding lack of infrastructural facilities in 'Tuscan City Phase-I'. He has stated that respondent has failed in providing infrastructural facilities like permanent electricity connection, sewage treatment plant, water treatment plant, two fully operational lifts in tower, maintenance and security etc. In regard to these grievances relating to lack of basic infrastructural facilities in the project. Authority observes that allegations made by complainant need to be ascertained through a Local Commissioner. Therefore, Authority deems it appropriate to appoint a Local Commissioner to evaluate existing condition of the project and to ascertain deficiencies if any existing therein. Local Commissioner shall inspect the site in question in the presence of all parties. He shall inform both parties in advance of the date on which they would inspect the site. Parties are directed to be present at the site on the date of inspection.

Authority, however, observes that prima facie allegations of complainant regarding lack of basic infrastructure at site appears to be true on account of the fact that respondent has handed over possession of unit to complainant without obtaining Occupation Certificate. Even, no proof has been placed on record by respondent that basic facilities have been installed at site as per approved plans. Therefore, expenses of Local Commissioner shall be borne by the respondent-company. Local Commissioner shall file his report

before next date of hearing with an advance copies to the parties.”

2. The appellant was allotted a unit in project ‘Tuscan Heights-Phase-I’ at Kundli, Sonapat. BBA² was executed between the parties on 15.04.2013. As per agreement, delivery of the flat was to be given to the allottee within 30 months i.e. 15.10.2015. The complainant approached the Authority with the grievance that despite lapse of six years the respondent had only offered fit out possession of the flat on 08.12.2017 at a stage when it had not possessed Occupation Certificate. Besides, charges had also been levied for increase in area of the unit.

3. The Authority came to the conclusion that possession of the unit had been handed over to the appellant on 03.04.2018. The complainant had shifted there and was enjoying possession of the unit. Neither he expressed dissatisfaction with increase in area nor had lodged any complaint with regard to the alleged amount charged in excess of the admissible rate. Besides, he had signed ‘NOC³’ issued by the builder thus, contractual relationship between the parties had come to an end thereafter.

4. Counsel for the appellant has relied upon a judgment dated 18.01.2025 passed by this Tribunal in Appeal No. 103 of 2022—***Manjeet Singh Rana v. Taneja Developers Infrastructure Ltd.*** to contend that DPC⁴ is payable till valid

² Builder Buyer’s Agreement

³ No Objection Certificate

⁴ Delayed Possession Charges

offer of possession is made to the allottee. NOC signed by him or the factum of his having entered into possession would not take away his right for DPC till valid offer of possession was made to him. As per him, instant case is fully covered by the judgment rendered in ***Manjeet Singh Rana's case*** (*supra*).

5. Mr. Shubhnit Hans, counsel for the respondent has not controverted the applicability of the said judgment.

6. We have heard learned counsel for the parties and given careful thought to the facts of the case.

7. In the facts and circumstances of the case, it is evident that once possession was offered to the allottee, he had no option but to accept the same and sign on the dotted lines. If he was asked to append his signatures on any document in the nature of NOC/Possession Certificate, he would sign the same as he needed a roof over his head. However, this does not take away the legal right available to him under the Act⁵ for claiming DPC till valid offer of possession. Thus, in line with the view taken in ***Manjeet Singh Rana's case*** (*supra*), we hereby hold that the allottee is entitled to DPC from due date of possession i.e. 15.10.2015 till valid offer of possession is made to him. This is so because mere taking of possession and execution of certain documents between two private parties i.e. promoter and the allottee would not render the provisions of law inoperative which provide that the allottee is entitled to DPC till he receives a valid offer of possession (preceded by an Occupation Certificate).

⁵ The Real Estate (Regulation and Development) Act, 2016

8. Appeal is allowed in the aforesaid terms. The grievance, if any, as regards lack of infrastructural facilities in the project in question shall be looked into by the Authority. It shall be at liberty to initiate *suo moto* proceedings in terms of statutory provisions, if circumstances so demand.

9. File be consigned to the record.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(joined through VC)

25.03.2025
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