

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Date of Decision: June 02, 2025

Appeal No.639 of 2022

M/s TDI Infrastructure Ltd. Through its authorised signatory,
registered office at 2A, Mahindra Tower, Bhikaji Cama Place,
New Delhi-110022

...Appellant

Versus

Sukhbir Singh A-1, Fire Station, Jor Bagh, New Delhi-110003

...Respondent

**Coram: Justice Rajan Gupta
Shri Rakesh Manocha**

**Chairman
Member (Technical)**

Argued by: Mr. Shubnit Hans, Advocate,
for the appellant-promoter.

Mr. Vikrant Dabas, Authorised Representative
for the respondent.

ORDER

JUSTICE RAJAN GUPTA, CHAIRMAN

Present appeal is directed against the order dated 25.03.2021 (in complaint no. 1801 of 2019) and 03.02.2022 (in review complaint No 996 of 2021) passed by the Authority¹. Operative part of order dated 03.02.2022 reads as under:

“4. The Complaint No. 1801 of 2019 was heard at length on 17.02.2021 and relief of delay interest payable to the complainant at the time of offering possession was granted by Bench comprising Hon’ble members Sh. Anil Kumar Panwar and Sh. Dilbag Singh Sihag on 17.02.2021. Grievance of the complainant is that while relief of payment of interest on account of delay in delivery of possession of unit was allowed but relief of upfront payment of interest on account of delay in delivery of possession along with monthly interest till receipt of possession along with Occupation Certificate was inadvertently not incorporated in

¹ Haryana Real Estate Regulatory Authority, Panchkula

the aforesaid order even though it was announced in the Court by learned Division Bench.

Sh. Dilbag Singh Sihag, Hon'ble Member, who was part of the Division Bench on 17.02.2021 confirms that such a pronouncement was made but inadvertently was not recorded in the order.

5. Now, the Authority after consideration, decides to rectify its order dated 17.02.2021. Complainant is allowed relief of upfront payment of interest on account of delay caused in delivery of possession, along with monthly interest till receipt of possession along with Occupation Certificate. Order dated 25.03.2021, also stands modified to that extent. Thus, as per provisions of section 18 of the RERA Act, 2016, the accrued interest up to the date of passing of order dated 25.03.2021, i.e., Rs. 16,17,465/- shall be paid upfront within 90 days, and thereafter, monthly interest @ Rs. 29,551/- will be paid to the complainant by the respondent till the date a legally valid offer of possession is made.

*6. Present review application is **disposed of** accordingly. File be consigned to record room and order be uploaded on the website of the Authority.*

2. Being aggrieved by the aforesaid direction, the appellant has filed the present appeal.

3. The allottee got booked a unit in project 'Espania Royale Floor, located on NH-1, Kamasur, Sonapat, floated by the promoter. The complainant was allotted a floor therein vide allotment letter dated 04.01.2013. BBA² was executed between the parties. The promoter was required to hand over the possession of the unit by July, 2016. The allottee got possession letter dated 04.04.2019. Demand of Rs.14,40,972.54 was made by the promoter in lieu of increase in area. The allottee preferred the instant complaint seeking relief of possession of the unit allotted to him and DPC³ after withdrawal of unreasonable demand of Rs.14,40,972.54/- raised by the promoter

² Builder Buyer's Agreement

³ Delayed Possession Charges

4. The promoter, in response to the directions issued to it for disclosing the status of his project, had filed its reply dated 26.08. 2019, informing that it had filed an application for grant of occupation certificate on 31.03.2017, but the concerned department has not taken any action thereon till date. Thus, an offer of "Fit Out Possession" was made to the complainant-allottee on 04.04.2019, along with a demand for outstanding dues of Rs. 14,40,972.54. According to the promoter, this demand is perfectly valid and the allottee is, therefore, liable to pay the same. Regarding the increase in the super area of the flat, the promoter's plea is that the area, at the time of booking, was tentatively adjudicated as 1,499 square feet, but after completion of the building, the said area has increased to 1,783.81 square feet as per the sanctioned plan. Therefore, allottee is liable to pay for the increased area in terms of the agreement entered between the parties.

5. The Authority allowed the complaint and granted the relief as recorded in opening paragraph of this order.

6. The appellant deposited an amount of Rs.22,27,200/- in compliance with the provisions of Section 43(5) of the Act⁴.

7. Learned counsel for the appellant-promoter pleaded that it had applied for grant of occupation certificate on 31.03.2017 which was not granted by the concerned Department. However, offer for fit out possession was made on 04.04.2019, thus, DPC should have been granted till 04.04.2019.

8. Learned counsel for the respondent-allottee defended the impugned order and submitted that DPC has rightly been granted by the Authority. Execution proceedings have also been initiated before the Adjudicating Officer, Panchkula. He pleaded that appellant-promoter should not be allowed to charge interest on delayed payments as default is on the part of promoter for not handing over possession within the stipulated time.

⁴ The Real Estate (Regulation and Development) Act, 2016

9. It is not in dispute that Occupation Certificate was never granted to the promoter. In terms of the agreement dated 25.01.2014, possession was to be delivered to the allottee within 30 months i.e., by 25.07.2016. However, the promoter failed to give possession within the stipulated time.

10. As per the allottee, delay in taking possession occurred as the area of the unit was increased without his consent. This plea is misconceived as there is a provision (Clause 6 of the agreement) according to which area of the unit can vary. This plea thus merits rejection.

11. The question now arises, whether order of the Authority granting DPC from due date of possession (i.e. 25.07.2016) till the date a legally valid offer of possession is made after obtaining certificate is sustainable. A perusal of the offer for fit out possession shows that the same has been given by the promoter itself. Such a document has no value in the eyes of law without obtaining occupation certificate.

12. The question thus arises as to the period for which the allottee would be entitled to DPC. It is evident that valid offer of possession has not been made to the allottee till date. Any offer of possession issued without Occupation Certificate by the promoter would not have any legal sanctity; offer of possession on its basis cannot be held to be a valid offer. Mere issuance of offer for fit out possession would still not take away his right to claim DPC till a valid offer of possession (preceded by an occupation certificate) is made to him. Thus, direction of the Authority to grant DPC till a date of legally valid offer of possession after obtaining occupation certificate is sustainable and is hereby upheld.

13. In view of the above, there is no legal infirmity in the order passed by the Authority. The appeal is hereby dismissed.

14. The amount deposited by the appellant/promoter i.e. Rs.22,27,200/- with this Tribunal, along with interest accrued thereon, in order to comply with the provisions of Section 43(5) of the Act be

remitted to the Authority for disbursement to the respondent-allottee, subject to tax liability, if any.

15. Copy of this order be communicated to both the parties/their counsel and the Authority.

16. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

June 02, 2025
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