

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 554 of 2022

Date of Decision: July 24, 2026

M/s. TDI Infrastructure Ltd. through its Authorised Signatory,
Registered Office at 10, Shaheed Bhagat Singh marg, New
Delhi-110001.

...Appellant-promoter

Versus

Ashu Gupta R/o 31-A, J-93, Ridgewood Estate, DLF IV, Gurugram.

...Respondent-allottee

CORAM:

**Justice Rajan Gupta
Dinesh Singh Chauhan**

**Chairman
Member (Technical)**

Present: Mr. Shubnit Hans, Advocate, with
Mr. Anjanpreet Singh, Advocate,
for the appellant.

Mr. Akshat Mittal, Advocate,
for the respondent.

O R D E R:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 21.01.2021
passed by the Authority at Panchkula¹. Operative part thereof reads as
under:

“It is an admitted fact that respondent despite a delay of about 7 years has not been able to handover a legally valid possession to the complainant due to non-receipt of Occupation Certificate from the concerned department. Moreover, the complainant has shown his willingness to wait for a legally valid handover of possession i.e. along with Occupation Certificate subject to upfront payment of interest amount for delay in delivery of possession till date. In such circumstances, respondent is directed to make an upfront payment of Rs. 15,74,253/- as interest for delay in delivery of possession (which has been calculated till date) to the complainant within 90 days of uploading of this order on the website of the Authority. Since, a legally valid offer of possession is yet to be made, respondent shall also pay

¹ Haryana Real Estate Regulatory Authority, Panchkula.

monthly interest amounting to Rs. 22,390/- to the complainant from date of order till valid handover of the unit i.e. till the date of receipt of Occupation Certificate.

Respondent shall issue a revised statement of accounts to the complainant at the time of valid offer of possession i.e. along with Occupation Certificate, after adjustments/reduction of Club charges and Miscellaneous charges and recalculation of super area as per 998 sq. fts. in compliance of aforementioned order dated 10.12.2020 as per principles laid down in complaint cases Nos. 607 of 2018- titled as Vivek Kadiyan Versus M/s TDI Pvt. Ltd. and No. 22 of 2018-titled as Parmeet Singh Versus M/s TDI Pvt. Ltd.”

2. The factual matrix of the case is that the respondent-allottee had booked residential flat bearing No. 3, Block-T-11, Floor-5, in the project namely “Tuscan Heights - TDI City” situated at Kundli, Sonipat, having a super area of 1080 sq. ft., being developed by the appellant-promoter. As per Clause 30 of the Flat Buyer Agreement dated 19.08.2011, possession was to be delivered within a period of 30 months, thereby making the deemed date of possession as 18.02.2014. The respondent-allottee had paid Rs. 28,89,052/- against the total sale consideration of Rs. 24,31,620/-, thereby substantially discharging his financial obligations under the Agreement. However, the appellant-promoter issued an Offer of Fit-Out Possession dated 27.04.2019, wherein it unilaterally enhanced the super area from 1080 sq. ft. to 1285 sq. ft. and raised an additional demand of Rs. 7,28,861/-. The respondent-allottee had raised objections to the arbitrary and unilateral increase in the super area and further disputed the demands raised towards miscellaneous charges amounting to Rs. 11,800/- and club charges of Rs. 50,000/-, contending the same to be illegal and unjustified. It was also specifically contended that the offer of possession was made without obtaining the requisite Occupation Certificate, rendering the same invalid in the eyes of law. The respondent-allottee subsequently issued

legal notice dated 30.06.2019, however, no satisfactory response was received from the appellant-promoter, which ultimately constrained the respondent-allottee to file the complaint before Authority to seek possession of the flat, interest for the inordinate delay in delivery, and quashing of the illegal and arbitrary demands raised by the appellant-promoter.

3. The stand of the appellant-promoter before the Authority was that it had applied for the grant of Occupation Certificate on 09.05.2014; however, possession could not be handed over due to the pendency of the said application before the competent authority. It was further asserted that the Offer of Fit-Out Possession dated 27.04.2019 was valid and in accordance with the terms of the Agreement, and that the super area was tentative in nature and subject to variation until completion of construction. It was also contended that the final revised super area stood at 1209 sq. ft., reduced from 1285 sq. ft., in compliance with the Authority's earlier order dated 12.02.2020. The appellant-promoter further pleaded that the charges towards club membership and miscellaneous expenses were duly recoverable under the terms and conditions of the Flat Buyer Agreement.

4. After considering rival contentions of the parties, the Authority disposed of the complaint vide impugned order, operative part whereof has been reproduced in para 1 of this order.

5. Aggrieved by the impugned order, the appellant-promoter has preferred the instant appeal before this Tribunal. It is primarily contended that the Authority failed to treat the Offer of Fit-Out Possession as a valid offer of possession, and further erred in awarding delay possession charges beyond the date of the said offer.

The appellant-promoter further contended that the construction of the project was adversely affected due to NGT-imposed bans and the Covid-19 pandemic, and thus, the delay in handing over possession cannot be attributed to the appellant-promoter, as the same was occasioned by circumstances beyond its control.

6. Counsel for the respondent-allottee has contended that appellant-promoter had issued an offer of Fit Out possession which was not valid as the same was made without obtaining the requisite Occupation Certificate, which has not been granted to the project till date. It was further submitted that the Authority rightly awarded delay possession charges, considering that the deemed date of possession was 18.02.2014, i.e. much prior to the outbreak of the Covid-19 pandemic, and therefore, no benefit on account of Covid-19 can be extended to the appellant-promoter in the facts and circumstances of the present case.

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

8. The plea of appellant-promoter for grant of benefit of “*force majeure*” on account of ban imposed by various authorities on construction activities and on account of COVID-19 pandemic, in our view, is totally mis-conceived.

9. The concept of “*force majeure*” has to be understood strictly in legal terms. In legal parlance “*force majeure*” refers to natural calamity such as war, flood, drought, fire, cyclone, earthquake, etc. Extending scope of the concept of “*force majeure*” would not be appropriate in view of the fact that the term has been defined in the Act itself (Section 6). In case a wider interpretation is given to the term, it would unduly benefit the promoter and be

detrimental to the allottee. Section 6 of the Act is reproduced hereunder for ready reference:

“6. Extension of registration.

The registration granted under section 5 may be extended by the Authority on an application made by the promoter due to force majeure, in such form and on payment of such fee as may be prescribed.

Provided that the Authority may in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year.

Provided further that no application for extension of registration shall be rejected unless the applicant has been given an opportunity of being heard on the matter.

Explanation:- For the purpose of this section, the expression “force majeure” shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.”

10. In ***M/s Pragatej Builders and Developers Pvt. Ltd. V. Mr. Abhishek Anuj Shukhadia and another***², Bombay High Court has denied the benefit of grace period on account of Covid-19 pandemic holding that the original agreement would be adhered to and Covid-19 pandemic would not exempt the promoter from interest liability.

11. Admittedly, the deemed date of possession was 18.02.2014 and that the Occupation Certificate has not been granted to the project till date. Consequently, it cannot be held that a valid offer of possession was ever made to the respondent-allottee. In view of the foregoing, we find no legal infirmity in the impugned order passed by the Authority.

² 2024 Supreme (Online) (Bom) 1822

12. However, the Authority has directed that possession be given along with Occupation Certificate. This Bench feels that such an order amounts to indirect direction to DTCP to grant Occupation Certificate. It is to be noticed that it is purely within the discretion of DTCP to grant Occupation Certificate on inspection of every building. Thus, no such direction can be given to the said authority. The direction is, thus, modified. It is held that if and when a valid offer of possession is made to the allottee, she shall be entitled to a unit measuring 998 square feet.

13. In view of the above, we find no merit in the appeal. The same is hereby disposed of in above terms.

14. The amount deposited by the appellant-promoter with this Tribunal along with accrued interest thereon, in order to comply with the provisions of Section 43(5) of the Act be remitted to the Haryana Real Estate Regulatory Authority, Panchkula for disbursement to the parties as per their entitlement in accordance with law and Rules.

15. Copy of this order be sent to parties/their counsel and the Authority below.

16. File be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Dinesh Singh Chauhan
Member (Technical)

July 24,2026/mk