



Complaint No. 2626 of 2019

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

### COMPLAINT NO. 2626 OF 2019

Nirmala

....COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

**CORAM: Rajan Gupta**

**Chairman**

**Anil Kumar Panwar**

**Member**

**Date of Hearing: 27.02.2020**

**Hearing: 3<sup>rd</sup>**

**Present: - Mr. Deepak Kumar, Counsel for complainant.**

**Mr. Shobit Phutela & Shubhnit Hans, Counsels for respondent.**

**ORDER** (RAJAN GUPTA-CHAIRMAN)

1. This is third hearing of the matter. On the last hearing i.e. 15.01.2020, complainant had stated that she is mainly aggrieved due to extra demand raised by the respondent vide offer for fit-out possession letter dated 04.04.2019, on the pretext of increase in super area from 1499 Sq. fts to 1783.81 Sq. fts. She had also stated that his case is squarely covered by the principle laid down by this Authority in an earlier decided complaint No. 607 of 2018 titled as "Vivek Kadyan Versus M/s TDI Infrastructure Limited and others" dated 29.01.2019 and Complaint No. 83 of 2019 titled as AdeshVats vs TDI infrastructure Ltd. dated 23.04.2019.
2. The Authority vide its order dated 15.01.2020, had directed both the parties to carry out actual measurements of the carpet as well as the super area at the site as per sanctioned plan and to file copy of the actual measurements of carpet as well as super area. While making such calculations respondent was directed to follow the guidelines as laid down by this Authority in the above referred cases.
3. In compliance of the orders of the Authority, measurements at the site have been carried out. Both parties are satisfied with the measurements done. Accordingly, agreed super area of the apartment is 1679 sq. fts.





Respondent has filed revised statement of accounts dated 24.02.2020 on the basis of revised super area and has supplied its copy to the complainant.

4. Further case of the complainant is that she had booked the duplex unit in the project named "Espania Royale Floors (KRF)" of the respondent situated at Sonipat in March, 2012. Unit No. RF-45/Duplex measuring 1499 sq. ft. was allotted to her. Floor Buyer Agreement (hereinafter referred to as FBA) was executed between the parties on 12.09.2014. Delivery of the flat was to be made within 30 months from the date of agreement, thus deemed date of delivery was 12.03.2017. Payments were to be made under Construction linked payment plan. She has paid about Rs.38,15,409/- against the Basic Sale Price of Rs. 34,99,999/- till date. Total sale consideration inclusive of EDC/IDC was Rs.40,32,514/-. Thus, she has paid more than 90% of the total sale consideration.

The grouse of the complainant is that the respondent has issued an Offer for Fit Out Possession cum demand letter on 04.04.2019, whereby she was informed for the first time about unilateral increase in super area from 1499 sq. ft. to 1783.81 sq. ft. i.e. by 284.81 sq. fts which amounts to an increase by 19 percent of the agreed area. The increase in super area has put an additional financial burden of Rs.9,27,903/- on her. She states that such a huge increase in the super area is unreasonable because this increase has been done without her consent. She is further aggrieved by the fact that respondent



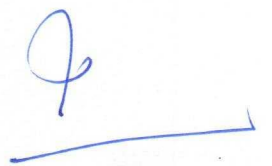


has installed a temporary iron staircase in the backside of the apartment which was earmarked as green spaces without seeking her consent, which poses a serious threat to her privacy. She is further aggrieved on account of levy of club membership charges despite the fact that there is no club in existence as yet. Further, there is a delay of about three years in delivery of the possession for which she should be compensated.

5. The respondent has denied all the allegations and has raised several objections as follows:

i) That provisions of Real Estate (Regulation and Development) Act, 2016 are not applicable to the present case because the FBA was executed between the parties much prior to coming into force of the Act, hence the terms of agreement executed between the parties only shall be binding on them.

ii) The present project is duly registered with the Authority. The respondent had even applied for grant of Occupation Certificate on 31.03.2017 which still has not been granted. Respondent states that delivery of possession could not be made due to pendency of an application for grant of Occupation certificate with the Director, Town & Country Planning department since 31.03.2017. Now, offer for fit out possession has been made on 04.04.2019. The unit is ready for fitouts and once the occupation certificate is granted formal possession of the flat will be handed over.



iii) That the area of the flat measuring 1499 sq. fts. at the time of booking was tentative and was subject to change till the construction of the building was completed. Now, final calculation of the super area as per the sanctioned plan is 1679 sq. ft. These calculations have been agreed upon. Respondent states that he is entitled to charge for the increase in area in terms of clause 6 of FBA.

iv) As regards installation of iron staircase in the backyard, the respondent states that it was installed in accordance with approved plans and for meeting the safety norms of the Fire department. Further, the respondent has developed the colony strictly in accordance with the plans approved by the State Government.

6. The Authority has considered the written as well as oral pleadings of both the parties. It observes and orders as follows:-

**i). Jurisdiction:**

First of all the respondent has challenged the jurisdiction of this Authority for the reasons that the agreement between the parties was executed prior to coming into force of RERA Act. This objection is not sustainable in view of the law laid down by this Authority in **Complaint**





**case No.144- Sanju Jain Vs. TDI Infrastructure Ltd.**

The logic and reasoning in that complaint are fully applicable on the facts of this case as well.

**ii). Increase in Area:**

In compliance of order dated 15.01.2020 of the Authority, measurements of the carpet as well as the super area at the site as per sanctioned plan were carried out. Both parties are satisfied with the measurements done. Accordingly, the super area of the apartment is 1679 sq. fts. Respondent has filed revised statement of accounts dated 24.02.2020 on the basis of revised super area and supplied its copy to the complainant. Complainant has agreed to pay for such revised super area i.e. 178 sq. fts.

**iii). Steel stair case area:**

The Authority has already settled this issue in Complaint No. 83 of 2019 titled as Adesh Vats vs TDI infrastructure Ltd. Moreover, respondent after site visit has filed revised statement of accounts dated 24.02.2020 on the basis of revised super area in compliance of the guidelines as laid down by this Authority in the above referred case and



the same has been accepted by the complainant. He has also agreed to pay for such increased super area as reflected in revised statement of accounts dated 24.02.2020 i.e. 178 sq. fts. Therefore, this issue is already settled.

**iv). Club Membership Charges:**

With regard to the club membership charges the complainant states that there is no provision in the builder-buyer agreement specifying particular amount payable by the complainant as club membership charges in addition to the total sale consideration.

It is ordered that in case, the club is not in existence, the demand on account of club membership charges is unjustified and is quashed. However, if the club is functional, the due fee thereof shall be paid by the complainant.

**v). Delay in Offer of Possession:**

Admittedly, the FBA between the parties was executed on 12.09.2014. As per Agreement delivery was to





be made within 30 months from the date of execution of FBA. Therefore, there is no controversy that as per FBA, the deemed date of possession of the unit was in 12.03.2017. The payments made by the complainant to the respondent are also admitted. The respondent further states that he had applied for OC on 31.03.2017. Further since all formalities have already been completed, he is hopeful that the Occupation Certificate will be granted soon. He states that the construction at site is complete and the offer for fit out possession has already been made on 04.04.2019 and the unit will be delivered to the complainant immediately after receipt of Occupation Certificate and payment of balance amount by the complainant.

It is admitted by the respondent that the offer of fit out possession was made in April, 2019 whereas the deemed date of possession was March, 2017. Accordingly, even in offering a fit out possession delay of about 2 years has been caused.

Since, the respondent has not yet been granted Occupation Certificate from the concerned department, it is presumed that the application for issuance of Occupation





Certificate vide letter dated 31.03.2017 was defective due to which the Department of Town & Country Planning has not yet granted him the Occupation Certificate.

Respondent had earlier filed a statement of accounts dated 24.02.2020 and supplied its copy to the complainant which reflects Rs. 10,89,414/-/- as payable to the complainant on account of delay compensation till 13.01.2020. The calculations made by the respondent in the revised statement of accounts dated 24.02.2020 are acceptable to the complainant. As per the aforesaid statement of accounts Rs. 10,89,414/- is shown as the amount payable to complainant as compensation on account of delay in handover of possession of the unit. The said account statement also reflects 09,92,754/- as amount payable by the complainant to respondent. Thus, the net amount payable to the complainant after adjustment of receivable and payable comes to Rs.96,660/-.

In these circumstances, the complainant is given an option to either takeover possession of the unit along with the net amount of delay compensation after adjustment of receivable and payable which comes to Rs.96,660/- or she



can opt to take delivery of the unit on receipt of Occupation certificate by the respondent and in that case she shall be entitled to be compensated for the delay caused in delivery of possession from the deemed date of possession till the date of grant of Occupation Certificate by the concerned department. In the latter case, the amount of delay compensation payable to the complainant will continue to accrue in favour of the complainant till the date of grant of Occupation Certificate from the concerned department and the respondent shall be bound to deliver possession of the unit on obtaining Occupation Certificate and pay the total accrued delay compensation amount to complainant on receipt of Occupation Certificate.

This Authority has disposed of a bunch of petitions with the lead case Complaint No.113 of 2018 titled Madhu Sareen V/S BPTP Ltd. There was consensus on all the issues except on the issue of compensation for delayed delivery of possession. Further logic and arguments in this regard were given by the dissenting member in Complaint case No.49 of 2018- Parkash Chand Arohi V/s Pivotal Infrastructures Pvt. Ltd. It is hereby ordered that the ratio of the said judgements





will be fully applicable in this case for determining the quantum of compensation for delayed delivery of possession.

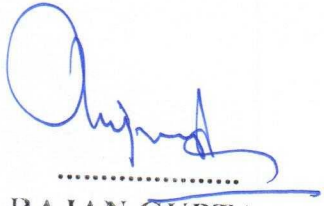
7. Now, in case the complainant opts for taking immediate possession of unit she will be entitled to receive the net amount of delay compensation after adjustment of receivable and payable which comes to Rs.96,660/-. The Authority in such case directs the respondent to handover the physical possession of the unit within 30 days of uploading of this order and pay Rs.96,660/- to the complainant within 90 days of the uploading of this order on the website of the Authority.


In case the complainant exercises her option to wait for the delivery of possession till the obtaining of Occupation Certificate by the respondent, she shall be entitled to a further amount of delay compensation which shall continue to accrue in favour of her till the date of grant of Occupation Certificate from the concerned department. In such case, the respondent shall handover the possession of the unit on obtaining Occupation Certificate and shall be bound to pay the total amount of delay compensation accrued in favour of complainant till grant of Occupation Certificate.

Respondent shall also periodically apprise the complainant the status of the application for obtaining Occupation Certificate.



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

  
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RAJAN GUPTA  
[CHAIRMAN]

  
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ANIL KUMAR PANWAR  
[MEMBER]

