HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2593 OF 2019

Ashu Gupta ...COMPLAINANT

VERSUS

M/S TDI Infrastructure Ltd. ....RESPONDENT

CORAM: **Rajan Gupta** **Chairman**

Anil Kumar Panwar **Member**

Dilbag Singh Sihag **Member**

Date of Hearing: 21.01.2021

Hearing: 6th

Present: - Mr. Akshat Mittal, Ld. Counsel for the complainant through VC.

Mr. Shobit Phutela & Shubhnit Hans, Ld. Counsel for the respondent.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. On the last date of hearing i.e. 10.12.2020, Authority has passed a detailed order vide which all issues were settled and matter was kept pending only for filing of calculation of interest payable to the complainant by the respondent on account of delay in offer of possession and revised statement of accounts by respondent after recalculation of super area as per principles laid down by Authority in Complaint No. 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 which came out to be 998 sq. ft. The detailed order passed by the Authority on 10.12.2020 are reproduced as below and be read as part of this order also:

> "1. Authority vide its order dated 12.02.2020, had directed respondent to file (a) component-wise comparative chart of the super area in tabular format; (b) reply with regard to the present status of club building (c) justification of charges for levying misc. charges; (d) correspondence which has transacted till date between him and the licensing department regarding grant of occupation certificate; (e) statement of accounts reflecting the amount of interest payable to the complainant on account of delay occurring in handing over the possession till 31.03.2020. Respondent had already filed all the documents except component-wise comparative chart of the super area. Learned counsel for the respondent stated today, that he has also filed component-wise comparative chart of the super area yesterday with the office of the Authority and has also send the same via an email today. Learned counsel for the complainant has stated that he has received a copy of all the documents including comparative chart of the super area.

2. On the other hand, learned counsel for the complainant briefed facts of the complaint that she booked a flat in the project named "Tuscan Heights- TDI City" of the respondent situated in Kundli, Sonipat on 16.11.2010. Flat No. 3, Block-T-11, Floor-5, measuring 1080 sq. ft. was allotted to her vide Flat Buyer Agreement (hereinafter referred to as FBA) on 19.08.2011. As per clause 30 of FBA, delivery of the flat was to be made within 30 months from the date of agreement, thus deemed date of delivery of the apartment was 18.02.2014. Besides, payments were to be made under Construction linked payment plan. He has paid approximately Rs.29,65,225/- against total sale consideration of Rs. 24,31,620/-.

Main grouse of the complainant is that respondent has issued an Offer for Fit Out Possession cum demand letter on 27.04.2019, whereby he has been informed for the first time about unilateral increase of super area from 1080sq. fts. to 1285 sq. fts. i.e. about 205 sq. fts which is almost an increase by 19 percent of the original area as agreed. Said offer for fit-out possession was accompanied by a demand of Rs.7,28,861/-. Her grievance is that respondent has offered possession without obtaining occupation certificate and some of the demanded amounts are legally not tenable like (i) miscellaneous expenses of Rs. 11800/-, (ii) charges demanded on the pretext of increase in apartment area from 1080 Sq. fts. to 1285 Sq. fts. and (iii) amount of Rs. 50,000/- demanded as club charges.

Complainant had objected to the unilateral increase in area, vide letter dated 15.05.2019, but respondent has not sent any reply to the same. He also sent a legal notice dated 30.06.2019 but respondent has failed to reply till date.

Therefore, complainant is seeking following relief; early possession of the apartment; and interest for delayed delivery of possession and quashing of illegal demands for miscellaneous expenses of Rs. 11800/- , charges demanded on the pretext of increase in apartment area from 1080 Sq. fts. to 1285 Sq. fts. and the amount of Rs. 50,000/- demanded as club charges.

3. On the other hand, learned counsel for the respondent stated that respondent had applied for grant of occupation certificate on 09.05.2014 and the matter is now pending with the concerned department. He further stated that possession of the flat could not be handed over due to pendency of an application for grant of Occupation certificate with the Director, Town & Country Planning department. Now offer for fit out possession has been made on 27.04.2019. Now, apartment is ready for fitouts and respondent company has already applied for Occupation Certificate and once the occupation certificate is granted possession of the flat will be handed over.

Moreover, his plea regarding impugned aforementioned demands is that the same are perfectly valid and complainant is liable to pay it in terms of the buyer's agreement.

Learned counsel for the respondent also stated that since club is in existence as shown in the photographs appended with their additional reply therefore, club charges are maintainable hence complainant is liable to pay the same.

As far as increase in area of the flat is concerned, learned counsel further stated that area of the flat at the time of booking measuring 1080 sq. fts. was tentative and was subject to change till construction of the building is completed. Therefore, respondent is entitled to charge for increase in area in terms of the FBA. Now, final calculation of the super area as per sanctioned plan is 1285 sq. ft. but respondent has reduced the area from 1285 sq. fts. to 1209 sq. fts. in compliance of order dated 12.02.2020 and now he is charging for only 1209 sq. fts. in the Final accounts statement.

4. Learned counsel for the complainant at this stage stated that although respondent promoter has taken correct interest for calculation of delay in handover of possession but period of delay has wrongly been taken from 19.08.2014 till 27.04.2019. Learned counsel for the respondent stated that as per clause 30 of the FBA, possession of the flat was to be handed over within 30 months i.e. by 18.02.2014 and not 19.08.2014. He further stated that since respondent has not yet handed over possession to the complainant along with Occupation Certificate therefore, respondent promoter should be liable to pay interest on account of delay in handover of possession till the valid delivery of possession along with OC. Learned counsel for the respondent conceded to the fact that respondent has not been granted Occupation Certificate although application in this regard has been made by him on 09.05.2014. Learned counsel for the respondent has also admitted that the period for offer of possession was tentatively 30 months from the date of agreement, in view of which calculations on account of interest for delay in handover of possession should have been calculated from 18.02.2014 till 31.03.2020 as per order dated 12.02.2020 passed by the Authority.

He further stated that complainant does not wish to avail club facility therefore club charges may be quashed. Similarly she also does not wish to engage any advocate to carry out registration formalities, therefore, the demand made by the respondents towards "Miscellaneous charges" may be withdrawn.

5. Authority after hearing the parties and going through the record observes as under:-

(A) **Increase in Super Area:**

This Authority has already laid-down principles for levying charges in respect of increase in super area while deciding 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. Respondent, stated that he has filed calculations as per said principles, component wise details of the revised super area as per aforesaid principles is as follows:

AREA AS PER SANCTIONED PLAN/ SITE PLAN AND COMPLAINT CASES NOS. 607 OF 2018 – TITLED AS VIVEK KADIYAN VERSUS M/S TDI PVT. LTD.	
Super Area Details	**Area In Sq. Fts.**
Covered Area	670
Balcony + Projection Area	150
Shaft Area	60
Circulation Area	150
Stilit Floor + BT Common area	28
Mumty/ Machine Room/ Water Tanks Area	71.15
STPP, ESS, Guard Room, Panel Room, B.W etc.	80.55
	1209.70

Relevant portions of the 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. for determination of super area in the present case are reproduced below:

"**Increase In Area :** The case of the complainant is that as per clause1 of the agreement dated 28.03.2013 it was agreed that the super area of the flat shall be 1499 Sq.ft. In clause (1) of the agreement definition of the super area is as shown in Annexure-I of the agreement. The definition of the super area in Annexure-I is reproduced below:-

" Super Area for the purpose of calculating the sale price in respect of the said Apartment shall be the sum of Apartment area of the said Apartment and its pro-rata share of common areas in the entire building.

Whereas the Apartment area of the said Apartment, shall mean the entire area enclosed by its periphery walls including area under walls, columns, balconies cupboards and lofts etc. and half the area of common walls with other premises/independent Floors/Apartment , which from integral part od Said Apartment and Common area shall mean all such parts / areas in the-

entire said building which the Allottee shall use by sharing with other occupants of the said building including entrance corridors and passages, staircase, mumties, service areas including but not limited to machine room, Overhead water tank, maintenance office / store etc., architectural feature, if provided and security fire control rooms.

Super Area of the Apartment provided with exclusive open terrace(s) shall also include area of such terrace(s); the purchaser however, shall not be permitted to cover such terrace(s) and shall use the same as open terrace only and in no other manner whatsoever."

It further reads as follows:-

"It is further clarified that the super area mentioned in the Agreement is tentative and for the purpose of computing sale price in respect of said Floor only and that the inclusion of common areas within the said building for the purpose of calculating super area does not give any right, title or interest in common areas to the Buyer except the right to use common areas by sharing with other occupants/allottees in the said building subject to timely payment of maintenance charges."

Clause (2) of the agreement reads as follows:

"The super area stated in this Agreement is tentative and is subject to change till the construction of the said Building is complete. The final super area of the said Floor shall be confirmed by the Company only after the construction of the said building is complete and occupation certificate is granted by the competent authority(ies). As such, the total price payable for the said Floor shall be recalculated upon confirmation by the Company of the final super area of the said Floor. If there will be an increase in super area, the Buyer agrees and undertakes to pay for the increase in super area immediately on demand by the company, without any interest, on the rate as agreed herein, and if there shall be a reduction in the super area, then the refundable amount due to the Buyer shall be adjusted by the Company from the final installment as set forth in the Schedule of Payments in Annexure-II."

Clause (6) of the agreement provides that in the event of increase or decrease to the extent that 10% to the agreed area of the apartment, the adjustment in the payments shall be made as per the basic rate, however, if the increase or decrease is more than 10% then it shall be the company which shall have the sole discretion to fix the rate for such an increase or decrease.

The flat buyer agreement was executed on 28.3.2013. However, plans of the colony were got approved from the appropriate authority of the State Government on 12.2.2015. As per agreement the super area of the apartment was 1499 sq.ft. whereas the respondents are seeking to charge the complainant for super area measuring 1783.5 sq.ft. which represents an increase of 284.81 sq.ft. amounting to an increase of 19 percent. This is a huge variation from the agreed carpet area which has put an additional financial burden of Rs.6,84,000/- upon the complainant, which the complainants are agitating as being unfair and unjustified.

The Authority in its earlier orders dated 20.11.2018 had assumed that when the agreement was made the plans had already been approved which underwent changes later on resulting in increase in the super area.

However, it has now transpired that on the date of the agreement the plans had not been approved. They were for the first time approved in February, 2015. Therefore, a comparison of the super are is obviously not possible. Authority, therefore, shall determine whether the super area for which the payment is being demanded by the respondents is justified or not.

The respondents have placed before the Authority approved plans of the apartment as well as a comparative chart of the super area. In the chart a comparison has been drawn between the areas as per the marketing plan and as per the sanctioned plan. After careful examination of the matter and after hearing both the parties, the Authority orders as follows:-

i) **Covered Area**: In the marketing plan the covered area was proposed to be 1217 sq.ft. whereas as per sanctioned plan it has become 1252 sq.ft. The explanation for this increase is that the earlier calculation of the carpet area was done by taking external walls of 4.5" width whereas the actual external walls are of 9" width. The carpet area of an apartment is determined after accounting for full width of the external walls provided they are not shared with any other apartment. If an external wall is shared with an adjoining apartment then only 50% of the width of such external wall shall be taken into account. After discussion of this principle the complainant agrees that the carpet area of the apartment may be determined as 1252 sq.ft.

ii) **Balcony plus projection area:-** As per plan and the actual calculation at the site the balcony plus projection area comes to 208 sq.ft. In the marketing plan however, it was proposed to be 165 sq.ft. The width as well as length of the balcony has actually increased in the sanctioned plan compared with the marketing plan. Since the actual balcony is 208 sq.ft., therefore, the complainant is bound to pay for it. Accordingly the complainant shall pay for balconies of 208 sq.ft.

iii) **Shaft Area:** The Authority examined the sanctioned plan of the apartment and found that a plumbing shaft has been provided which is enclosed on three sides and open on fourth side. Detailed examination of the shaft revealed that each of the three walls are actually external walls of one or the other apartments. Since entire external wall of the apartments has been accounted for in the carpet area of the apartment, now the same wall cannot be allowed to be charged in the form of plumbing shaft. The plumbing shaft in this case shall be considered an external open area. No additional construction, which has not been charged as carpet area, has taken place in the shaft. Also, provision of services is a part of the agreement, therefore, the cost proposed to be charged on account of the shaft is not justified at all. Accordingly, 18 sq.ft. of the shaft area is disallowed and shall be deducted from the super area of the apartment.

iv) **Circulation Area:** In the marketing plan circulation area was proposed to be 130 sq.ft., whereas 163 sq.ft. is being charged on the basis of the actual sanctioned plan. The circulation area is comprised of corridors, lift-lobbies, entrance lobbies etc. It also includes lift areas. It is intended to facilitate horizontal and vertical movement within the apartment complex. This is a necessary feature of the housing complex. The complainants are duty bound to pay for it.

The complainants, however, shall pay only for the total circulation area divided by the total number of apartments in the complex/tower. Since calculation of the circulation area has not been challenged, the complainants shall pay for the proportionate circulation area measuring 163 sq.ft. However, in case they find that the actual circulation area is less than 163 sq.ft. they may represent accordingly to the respondent or may approach this Authority on a later date, again.

v) **Steel stair case area:** The respondents are charging 56 sq.ft. as proportionate share of the common steel stair case. Since, this is a fire escape facility, for the residents they have to pay for it. However, if the actual proportionate area of the stair case is less than 56 sq. fts., the respondent shall charge accordingly, and the complainants shall retain their rights to approach this Authority once again in case they find any discrepancy in the calculations. This, however, is further subject to the condition that this fire escape facility has been provided in accordance with sanctioned plan.

vi) **Mumty/machine room/water tanks area:**-Typically, a Mumty is a shed made over the staircase leading to the top terrace. Machine room is a covering over the machines installed for the usage of the building, like the roof cast over the lift area and other similar facilities. Water tanks are usually kept open on the terrace area and sometime a roof is constructed over them for protection from rain etc.

The water tanks, machines, mumties etc. are a part of the basic services provided in an apartment/ complex. When a person purchases an apartment he presupposes provision of all basic services like drinking water, drainage, sewerage system, electricity supply, road and street light system etc. The cost of all such facilities is invariably a part of the overall cost of the apartments. Its cost is presumed to be included in the per square foot cost of the apartment.

Another facet of this issue is that entire super area is being charged at the same rate as the carpet area of the apartment. The carpet area of the apartment includes flooring, RCC roof, painting of the walls, conduiting, windows etc. The cost per sq.ft. of the covered area containing all these facilities is entirely different from the cost per sft. of mumty, machine rooms or the water tanks area. Therefore, the cost per square foot of these facilities is much less than the cost per square foot of the carpet area. The facilities like mumty, machine room & water tanks areas can either be considered as a part of the services in the apartments therefore, not chargeable at all, or if there is a provision in the agreement for charging extra for these facilities then the same can be charged at the rate of the actual cost incurred divided proportionately amongst all the apartments, and not at the rate per sq. ft. of the carpet area.

The agreement made between the parties in regard to these facilities is rather vague. The respondent should have precisely defined the area to be calculated under such facilities and also the rates chargeable for the same, since costing of these facilities has not been defined properly and unambiguously, they now have to be interpreted in a reasonable manner. This Authority therefore determines that the actual cost incurred on these facilities shall be worked out and that actual cost shall be divided amongst

all apartments, and that proportionate actual cost along with 15% margin shall be charged from each of the allottee and the complainants. The areas of such various facilities cannot be allowed to be charged at the same rate as the carpet area of the apartment.

vii. **Stilt Floor + Basement (BT) Common Area:**

In the marketing plan Stilt Floor + BT Common Area was proposed to be 25 sq.ft., whereas 28 sq.ft. is being charged on the basis of the actual sanctioned plan. This area is at the ground level slightly raised, and supported by thick columns, generally used as non-enclosed parking area. Thus, being a necessary feature of the housing complex, built for convenience of the residents. The complainants shall pay for it.

The complainant, however, shall pay only for the total Stilt Floor + BT Common Area divided by the total number of apartments in the complex/tower, which has been stated to be 28 ft. payable by the complainants. However, in case the complainant finds that the actual Stilt Floor + BT Common Area is less than 28 sq.ft. he may represent accordingly to the respondent or may approach this Authority on a later date, again.

viii **S.T.P, E.S.S, Guard Room, Panel Room, B.W. etc. area:-**

Sewerage Treatment Plant (S.T.P), Electric Sub Station (E.S.S), Guard Room, Panel Room and Boundary Wall (B.W) are a part of the basic services provided in an apartment/ complex. When a person purchases an apartment he presupposes provision of all basic services like drinking water, drainage, sewerage system, electricity supply, road and street light system etc. The cost of all such facilities is invariably a part of the overall cost of the apartments. Its cost is presumed to be included in the per square foot cost of the apartment.

Another facet of this issue is that entire super area is proposed to be charged at the same rate as the carpet area of the apartment. The carpet area of the apartment includes flooring, RCC roof, painting of the walls, conduiting, windows etc. The cost per sq.ft. of the covered area containing all these facilities is entirely different from the cost per sq. ft. of S.T.P, E.S.S, Guard Room, Panel Room, B.W. etc. area. The cost per square foot of these facilities is much less than the cost per square foot of the carpet area. The facilities like S.T.P, E.S.S, Guard Room, Panel Room, B.W. etc. area can either be considered as a part of the services in the apartments therefore, not chargeable at all, or if there is a provision in the agreement for charging extra for these facilities then the same can be charged at the rate of the actual total cost incurred divided proportionately amongst all the apartments, and not at the rate per sq. ft. of the carpet area.

The agreement made between the parties in regard to these facilities is rather vague. The respondent should have precisely defined the area to be calculated for such facilities and also the rates chargeable for the same. Since costing of these facilities has not been defined properly and unambiguously, they now have to be interpreted in a reasonable manner. This Authority therefore determines that the actual cost incurred on these facilities shall be worked out and that actual cost shall be divided amongst all apartments, and that proportionate actual cost along with 15% margin shall be charged from

each of the allottee and the complainants. The areas of such facilities cannot be allowed to be charged at the same rate as the carpet area of the apartment.

Accordingly, on the basis of the above principles, Shaft area, Mumty/ Machine room/ Water Tanks area etc. area has to be excluded from super area and area shown under STP, ESS, Guard room, Panel room and boundary wall be considered only for charging proportionate and actual expenses rather agreed rate of super area plus fifteen percent profit.

Therefore, 211.7 sq. ft. area shall be deducted from 1209.7 sq. ft. super area to be charged by the respondent. Respondent accordingly shall charge the complainant for only 1209.7 (-) 211.7 = 998 sq. ft. plus actual expenses of 80.55 sq. fts. and fifteen percent profit.

(B.) **Possession and interest for delay in delivery of possession :**

Admittedly, FBA between the parties was executed on 19.08.2011. As per clause 30 of FBA, delivery was to be made within 30 months from the date of execution of FBA. Therefore, deemed date of possession of the unit was in Feb, 2014.

Respondent while calculating interest on account of delay in offer of possession has taken the deemed date of delivery 19.08.2014. After perusal of record, submission of learned counsel for the complainant, in this regard is found correct and therefore, the deemed date of delivery of possession was 18.02.2014. Further as pointed out by complainant's counsel respondent has therefore wrongly calculated interest for delay in handover of possession from 19.08.2014 till 27.04.2019. As per complainant's counsel the same was to be calculated from 18.02.2014 till 31.03.2020 as per order dated 12.02.2020 passed by the Authority. Learned counsel for the respondent admitted that the period for offer of possession was tentatively 30 months from the date of agreement and respondent has not been granted Occupation Certificate although application in this regard has been made by him on 09.05.2014.

Authority after perusal of the record and taking into consideration, written as well as verbal submissions of both the parties, observes that as per clause 30 of the FBA, possession of the flat was to be handed over within 30 months i.e. by 18.02.2014, therefore, respondent promoter should have calculated interest for delay in offer of possession from 18.02.2014 till 31.03.2020 as per order dated 12.02.2020 passed by the Authority.

Further, since it is admitted by the respondent that offer of fit out possession was made on 27.04.2019 whereas deemed date of possession was Feb,2014. Accordingly, even in offering a fit out possession delay of nearly 4 years has been caused. Therefore, offer for fit out possession dated 27.04.2019 cannot be called a proper offer of possession. It is inferred that application for issuance of Occupation Certificate vide letter dated 09.05.2014 would have been defective due to which the Department of Town & Country Planning has not granted him the Occupation Certificate even today. In these circumstances, it can be concluded that a proper offer of possession is yet to be made. Accordingly,

respondent promoter is liable to pay interest on account of delay in handover of possession from the deemed date of possession till the actual / valid delivery of possession i.e. possession along with OC.

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 in this matter. 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.

(C.) **Club Membership Charges:**

With regard to the club membership charges learned counsel for the complainant stated that complainant does not wish to avail club facility therefore club charges may be quashed. Learned counsel for the respondent stated that since the club is in existence as shown in the photographs appended with their additional reply therefore, club charges are maintainable and the complainant is liable to pay the same.

Authority after perusal of the record and taking into consideration written as well as verbal submissions of both the parties, observes that since the club is in existence, therefore, plea on behalf of the complainant that she does not wish to avail club facility, is unreasonable since club facility is meant for usage of allottees including the complainant therefore, demand on account of club membership charges is justified and stands quashed.

(D.) **Miscellaneous Expenses:**

Learned counsel for the respondent stated that this amount has been charged on account of the fee payable to the advocate for carrying out registration formalities etc. It is ordered that in case complainant does not wish to engage any advocate to carry out registration formalities, the demand made by the respondent towards "Miscellaneous charges" shall be withdrawn.

6. Now, respondent is directed to issue a fresh statement of accounts to the complainant after recalculating the amounts payable by the complainant and interest payable to the complainant by the respondent on account of delay in offer of possession; and revised super area of 998 sq. ft. in accordance with above principles. Net payables /receivables shall be clearly communicated after accounting for each item. This accounts statement shall be issued by the respondent within a period of 15 days and complainant may file her calculations in case she disagrees with respondent's statement of accounts and interest for delay in offer of possession of apartment.

> Authority had today after taking into consideration, written as well as verbal submissions of both parties had reserved the matter for decision. After the perusal of the record, it has come to light that respondent has taken 1209 sq. fts. super area taken into consideration while calculating interest for delay in offer of possession of apartment whereas 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. it comes to 998 sq. fts. In these circumstances, the matter is relisted on **21.01.2021** only for determination of amount payable by respondent to the complainant on account of interest for delay in offer of possession of apartment. Authority vide present order has decided all the issues except the amount payable to the complainant on account of interest for delay in offer of possession of apartment. Respondent will periodically apprise the complainant of the stage of construction of the project and the status of the application for obtaining Occupation Certificate."

2. Today, learned counsel for the respondent without mentioning any specific reason, stated that he could not file calculation of interest payable to the complainant by the respondent on account of delay in offer of possession as well as revised statement of accounts by respondent after recalculation of super area as per 998 sq. fts. in compliance of order dated 10.12.2020. Learned counsel for respondent stated that he will abide by the calculations made by the Authority regarding interest payable to the complainant by the respondent on account of delay in offer of possession. He also undertook to reduce the amount after recalculation of super area as per 998 sq. fts. in their final statement of accounts.

3. Learned counsel for the complainant stated that since offer of possession dated 27.04.2019 is defective as it is without Occupation Certificate, complainant wants to wait for a legally valid handover of possession i.e. along with Occupation Certificate. Learned counsel for the

complainant further stated that meanwhile respondent be directed to make upfront payment of interest amount for delay in delivery of possession till date to the complainant. He further stated respondent may also be directed to further pay monthly interest for delay in delivery of possession from the date of order till the date of receipt of Occupation Certificate. Learned counsel for the complainant has furnished two calculation sheets of interest payable to the complainant by the respondent on account of delay in offer of possession i.e. Rs. 18,29,981/- w.e.f. 18.02.2014 till 10.12.2020 and Rs. 16,43,008/- w.e.f. 18.02.2014 till 31.03.2020.

4. On the last date of hearing, matter was reserved after considering, detailed oral as well as written arguments of both parties. Later, matter had to be relisted for submission of correct calculations of interest on account of delay in delivery of possession to the complainant by the respondent and to issue a revised statement of accounts to the complainant after recalculating the amounts payable by the complainant incompliance of order dated 10.12.2020 taking revised super area of 998 sq. ft. Even today, respondent has failed to submit the same. Both parties have admitted payment of Rs. 28,89,052/. Therefore, as per calculations by office of the Authority, respondent is liable to pay Rs.15,74,253/- as interest on account of delay in delivery of possession to complainant.

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 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.

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

....
RAJAN GUPTA
[CHAIRMAN]

....
ANIL KUMAR PANWAR
[MEMBER]

....
DILBAG SINGH SIHAG
[MEMBER]

Haryana Real Estate Regulatory Authority • Panchkula