



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 445 OF 2019

Harvinder Jaggi & Anr.

....COMPLAINANTS

VERSUS

M/s TDI Infrastructure Ltd.

....RESPONDENTS

& Another

CORAM: Rajan Gupta

Chairman

Anil Kumar Panwar

Member

Date of Hearing: 17.02.2021

Hearing: 15th

Present: -Sh. Sanjeev Gupta, Ld. Counsel for the complainant through VC.

Sh. Shubhnit Hans, Ld. Counsel for the respondents through VC.

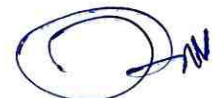
ORDER (ANIL KUMAR PANWAR-MEMBER)

1. The complainants of this case had booked a flat in July, 2011 in respondents' project named "Espania Floors" situated at Sonapat. Unit EF-60/TF, measuring 1224 sq. ft. and said flat was allotted to them on 23.01.2012. Flat buyer agreement (hereinafter referred to as FBA) was executed between the parties on 17.02.2012. As per said agreement, the

possession of the flat was to be offered by 17.08.2014. Complainants have paid about Rs. 26,77,988/- against the basic sale price of Rs. 19.50 lakhs till date. Total sale consideration inclusive of EDC/IDC was Rs. 22,69,708/-. The grievance of the complainants is that despite payment of entire cost of the flat, the respondent has failed to deliver them the possession of the flat.

Another grouse of the complainants is that respondents have offered them Fit Out possession alongwith demand letter on 27.09.2018, whereby they were informed for the first time about unilateral increase in super area by 174 sq. fts which amounts to 14 percent increase of the agreed area. Such increase has put an additional financial burden of Rs. 6,18,921/- on them. They are also aggrieved on account of unreasonable demands of Rs. 20,000/- towards interest free maintenance security (IFMS) and Rs. 11,800/- towards miscellaneous expenses. They are also aggrieved by the fact that despite payment of preferential location charges, the unit allotted to them is not park facing. Complainants are seeking relief against the unilateral increase in super area; for possession of park facing unit; refund of unjustified demands of Rs. 20,000/- towards IFMS and Rs. 11,800/- towards miscellaneous expenses and have prayed for award of compensation on account of delay in delivery of possession.

2. The respondents in response to the directions issued to them for disclosing the status of project had filed reply dated 01.04.2019 informing that



it had filed an application for grant of occupation certificate on 12.09.2016 but decision thereupon is still awaited. Respondents further pleaded that flat is ready for fitouts and it's formal possession will be delivered once the occupation certificate is granted. Respondents admitted that offer of "Fit Out Possession" was made to the complainant on 27.09.2018 along with demand of outstanding dues which were worked out at Rs. 06,18,921/-. Said demand, according to the respondent, is perfectly valid and the complainant are, therefore, liable to pay the same. As regards amount of Rs. 61,781 charged for preferential location, the respondent's plea is that said amount has already been discounted from the total amount.

As regards, increase in super area of the flat, respondent's plea is that the area at the time of booking was tentatively adjudged as 1224 Sq. fts. but on construction of the building as per sanctioned plan, said area has increased to 1398 Sq. fts. So, the complainants are liable to pay for the increased area in terms of agreement entered between the parties.

Later, in response to directions issued by the Authority to the office of Principal Secretary, Director, Town & Country Planning Department Haryana vide order dated 10.09.2019, District Town Planner (HQ) informed the Authority on 06.11.2019 that respondent's application for grant of Occupation Certificate was dismissed by Director, Town & Country Planning Department, Haryana vide order 30.05.2018 and an appeal filed by the



respondent against said order was dismissed on 26.09.2019 account of non-prosecution.

3. The respondents in compliance of the order dated 10.09.2019 had filed a revised statement of demand and a statement containing calculations of super area. The complainant filed objections to said statements and the respondent filed a rejoinder to assail those objections.

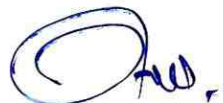
4. After hearing the parties and going through the objections filed by the complainant and the rejoinder filed thereto by the respondent, the Authority vide its order dated 22.12.2020 settled the issues regarding demands raised by respondents for IFMS charges, Preferential location charges and increase in super area charges.

For ready reference, relevant part of aforementioned order dated 22.12.2020 is reproduced as follows:

“i. Interest Free Maintenance Security:

Interest Free Maintenance Security is the money collected from all the allottees of a collective sum of money levied on the allottees of a residential/commercial project by the builder for present or future maintenances of the colony, on heads like lift maintenance, park development, security enhancement or any other maintenance works. The builder will keep the money under their custody, till RWA (Residential Welfare Association) is formed and thereafter, the builder has to transfer the money to the association. Thus, IFMS money is payable by the complainants. However, the respondents shall deposit it in a separate interest earning account. Till taking over of the project by RWA, the builder respondents shall render periodic account of income and expenditure to the general body of the residents of the colony.

Learned counsel for the complainants today, stated that he is willing to forgo his claim for refund of “Interest Free maintenance Security”. Thus, amount



charged from complainants on account of "Interest Free maintenance Security" is valid.

ii. **Miscellaneous Expenses:**

The respondents informed that this amount has been charged on account of the fee payable to the advocate for carrying out registration formalities etc. Learned counsel for the complainants has agreed to pay "Miscellaneous charges" to the respondent.

iii. **Preferential Location Charges:**

Learned counsel for the complainants stated that respondents in their reply have admitted that they have discounted Preferential location charges from the total amount to be payable by the complainants but the same has not been adjusted in the final statement of account dated 17.12.2019. Therefore the same should also be adjusted.

iv. **Increase in area:**

Learned counsel for the complainants stated that super area taken into account by respondents while preparing the statement of account dated 17.12.2019 was 1370 sq. fts. As per component-wise super area chart, filed by the respondents, revised super area is 1318 sq. fts. Whereas it comes to 1308 sq. fts. as per principles laid down in Complaint No. 607 of 2018 titled Vivek Kadyan Versus M/s TDI Infrastructure Pvt. Ltd., Complaint No. Parmeet Singh vs M/s TDI Infrastructure Pvt. Ltd. and Complaint No. 83 of 2019 titled Adesh Vats Versus M/s TDI Infrastructure Pvt. Ltd. Respondents should exclude 8 sq. fts. of area on account of Mumty/machine room/ Water tanks in the super area as per aforesaid principles.

v. **Interest on account of Delay in offer of possession:**

Learned counsel for the complainants further stated that respondents have wrongly calculated the interest for delay in offer of possession on Rs. 23,98,142/- till 18.12.2019 whereas complainants had paid Rs. 19,67,319/- till deemed date of possession i.e. 17.08.2014 and paid Rs. 07,10,669/- after the 17.08.2014. Thus, respondents have not taken into account some payments made by the complainants after deemed date of possession. As per their calculations, respondents are liable to pay Rs. 12,27,886/- till 18.12.2019. Therefore, calculations regarding interest for delay in offer of possession filed by complainants should be allowed."

5. Authority vide aforementioned order dated 22.12.2020, directed respondents to charge complainants only for 1308 sq. fts super area since area on account of Mumty/machine room/ Water tanks cannot form the part of super area as per the principles laid down by this Authority in its earlier

referred decisions. Authority also directed respondents to reduce amount charged on account of Preferential location from the total amount to be payable by the complainants.

Today, both complainants as well as respondents have sent their statement of accounts in respect of receivables and payables via email in compliance of orders dated 22.12.2020 & 27.01.2021 passed by the Authority.

Statement of accounts sent by respondents has been calculated after revision of super area as per 1308 sq. fts. in accordance with principles laid down in Complaint No. 607 of 2018 titled Vivek Kadyan Versus M/s TDI Infrastructure Pvt. Ltd., Complaint No. Parmeet Singh vs M/s TDI Infrastructure Pvt. Ltd. and Complaint No. 83 of 2019 titled Adesh Vats Versus M/s TDI Infrastructure Pvt. Ltd.

As per respondents' statement an amount of Rs. 1,88,326/- is due towards complainants, whereas learned counsel for the complainant has submitted that as per his calculations which he has sent to the Authority via email today, respondents have to pay back to him Rs. 60,096/-, which besides other items also includes charges on ground of preferential location as also the delay interest of Rs. 12,27,886/.

6. As per clause 28 of the FBA, respondent was obliged to give the possession to the complainants within 30 months which period had already lapsed Aug, 2014. Although the respondents had offered Fit-out Possession



on 27.09.2018 but such offer cannot be considered valid because occupation certificate has not been obtained till date. Such conclusion becomes all the more irresistible because respondents admit that even the appeal filed against the order dated 30.05.2018 vide which their application for grant of Occupation certificate dated 12.09.2016 was rejected, has been dismissed by the Principal Secretary, Director, Town & Country Planning Department Haryana.

So, the complainants is entitled to receive interest on account of delay in offering possession from the deemed date of Aug, 2014 to the date on which a valid possession will be offered to him after obtaining the occupation certificate. Such interest as per the decision of this Authority in complaint case No. 113 of 2018 – titled as “Madhu Sareen Versus BPTP Limited” is to be calculated as per Rule 15 of the HRERA Rules, 2017. The respondents shall, therefore, adjust the amount of delay interest so payable to the complainants at the time of raising further demands and in case complainants had already paid amount exceeding the amount actually payable by them, the respondents shall pay the excess amount to the complainants at the time of offering possession.

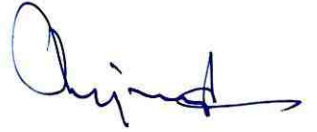
It deserves to be mentioned here that this Authority got the amount of delay interest payable to the complainants assessed from its Accounts Branch which had worked out the same at Rs. 14,09,666/- till 17.02.2021.



Therefore, respondents shall pay Rs. 14,09,666/- to the complainants on account of interest for delay in delivery of possession of the unit within 90 days of the uploading of this order on the website of the Authority.

Complainants wish to wait for the delivery of possession till the obtaining of Occupation Certificate by the respondents and therefore, they shall be entitled to a further amount of delay interest till a legally valid possession is offered after obtaining Occupation Certificate from the concerned department. The respondents in other words at the time of handing over possession of the unit after obtaining Occupation Certificate shall pay delay compensation to the complainants as accrued from date of passing of this order till actual delivery of valid possession.

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]