



Complaint No. 1801 of 2019

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 1801 OF 2019

Sukhbir Singh

....COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

**CORAM: Rajan Gupta**

**Chairman**

**Anil Kumar Panwar**

**Member**

**Dilbag Singh Sihag**

**Member**

**Date of Hearing: 25.03.2021**

**Hearing: 12<sup>th</sup>**

**Present: - Mr. Vikrant Dabbas, son of the complainant.**

Mr. Shubhnit Hans, Ld. Counsel for the respondent through VC.

**ORDER ( DILBAG SINGH SIHAG -MEMBER )**

1. On the last date of hearing i.e. 17.02.2021, Authority has passed a detailed order vide which all issues were settled and matter was kept pending only for determination of interest on the ground of delay in payment of installments. Respondent was directed to furnish in tabulated form the particulars of the installments which were late paid, date on which such installments were payable, dates on which instalments were actually paid, the rate at which interest has been calculated and the actual amount of interest calculated for each delayed installment. Till date said details have not been filed by the respondent.

The detailed order passed by the Authority vide which all issues were settled on 17.02.2021 is reproduced as below and be read as part of this order also:

“3. After hearing the parties and going through the objections filed by the complainant and the rejoinder filed thereto by the respondent, the Authority on the disputed questions observes as under:-

(i) **Stamp duty / Misc. expenses:-**

The impugned demand reflects a sum of Rs. 11,800/- chargeable from the complainant on account of stamp duty / misc. expenses. These charges are being levied towards expenses to be incurred at the time of execution and registration of conveyance deed. The complainant wishes to pay these charges from his own pocket at the time of execution and registration of conveyance deed. The respondent shall therefore withdraw these charges subject to the condition that all these expenses will be borne by the complainant himself as and when the conveyance deed is executed and registered.



(ii) **Club Membership charges:-**

The respondent has raised a demand of Rs. 50,000/- on account of Club Membership charges. Respondent could not deny during arguments that the club is presently not functional, therefore, the Authority decides that the club membership charges shall be payable by the complainant only when the club becomes functional for the use of complainant and other allottees of the project.

(iii) **Increase in super area:-**

The Authority had directed the respondent to calculate the super area in terms of principles laid down in Complaint Case No. 607 of 2018 titled as "Vivek Kadyan Versus M/s TDI Infrastructure Pvt. Ltd., in Complaint Case No. 22 of 2019 titled as Parmeet Singh Versus M/s TDI Infrastructure Pvt. Ltd. and the Complaint Case No. 83 of 2019 titled as "Adesh Vats Versus M/s TDI Infrastructure Pvt. Ltd. In compliance of said directions, the respondent filed a statement wherein super area earlier claimed as 1783.81 Sq. fts. was reduced to 1679 Sq. fts. After going through the said statement, the Authority finds that the respondent for calculations of super area has added 56 Sq. fts. area of Steel Staircase. Such area of staircase as per the principles laid down by this Authority in its earlier referred decisions cannot form the part of super area and the same is liable to be deducted from the area measuring 1679 Sq. fts. as calculated by the respondent. After deduction of above mentioned area of staircase, the super area of the complainant's flat shall stand reduced to 1623 Sq. fts. Considering that the respondent had incurred the cost for constructing the steel staircase, the Authority would hold that the respondent shall divide the actual cost of the steel staircase by the total number of flats in the building and the proportionate cost so arrived at shall then be charged from the complainant.

iv) **Interest on account of delay in offer of possession:-**

As per clause 28 of the FBA, respondent was obliged to give the possession to the complainant within 30 months which period had already lapsed in July, 2016. Although the respondent had offered Fit-out Possession on 04.04.2019 but such offer cannot be considered valid because occupation certificate has not been obtained till date. So, the complainant is entitled to receive interest on account of delay in offering possession from the deemed date of July, 2016 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 respondent shall therefore adjust the amount of delay interest so payable to the complainant at the time of raising further demands and in case such amount of interest exceeds the amount payable by the complainant, the respondent shall pay the excess amount to the complainant at the time of offering possession.

It deserves to be mentioned here that this Authority got the amount of delay interest payable to the complainant assessed from its

Accounts Branch and the same on the calculations has been worked out at Rs. 16,17,465/- till 17.02.2021.

v) **Goods and Service Tax:-**

The respondent is charging Goods and Service Tax (GST) @ 12%. This according to the complainant should be @ 5% which is the rate of GST prescribed by the Government. The GST is payable on the date of execution of the conveyance deed and therefore, the respondent will be entitled to charge GST at the rate which will be applicable on the date the conveyance deed is executed and registered in favour of the complainant.”

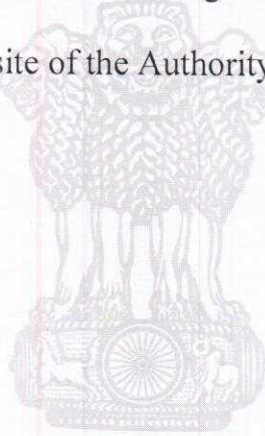
2. Today, learned counsel for the respondent sought one more opportunity to file details of the installments in compliance of order dated 17.02.2021.

3. Mr. Vikrant Dabbas, son of the complainant appearing on behalf of the complainant, objected to further adjournment on the ground that respondent is resorting delay tactics and should not be allowed further adjournment. He requested the Authority to quash the amount charged by the respondent on account of delay in payment of installments which comes to Rs. 2,69,675/- approximately, since respondent has himself failed in delivery of the unit within stipulated time as per agreement to the extent that till date he has not even been granted Occupation Certificate by the concerned department.

4. After hearing both the parties , Authority finds that it is an admitted fact that the Fit-out Possession which was offered on 04.04.2019, cannot be considered a legally valid offer because occupation certificate has

not been obtained till date. In such circumstances when respondent himself has failed to deliver him a valid possession till date, he cannot be allowed to charge interest on delay in payment of installments. Therefore, request made by respondent to grant more time to file details of the interest levied by respondent on delayed installments in compliance of order dated 17.02.2021, bears no merits and same is rejected. Hence, amount charged by the respondent on account of delay in payment of installments which comes to Rs. 2,69,675/- approximately stands quashed.

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



सत्यमेव जयते

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**RAJAN GUPTA**  
[CHAIRMAN]

.....  
**ANIL KUMAR PANWAR**  
[MEMBER]

.....  
**DILBAG SINGH SIHAG**  
[MEMBER]