



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 2907 OF 2019

Sunita

...COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

**CORAM: Rajan Gupta**

**Chairman**

**Anil Kumar Panwar**

**Member**

**Dilbag Singh Sihag**

**Member**

**Date of Hearing: 08.04.2021**

**Hearing: 6<sup>th</sup>**

**Present: - Mr. Sudeep Gehlawat, Ld. Counsel for the Complainant.**

**Mr. Shubhnit Hans, Ld. Counsel for the Respondent through VC.**

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

1. In compliance of order dated 14.10.2020, respondent has filed an affidavit along with statement of accounts illustrating the amount receivable and payable on account of delay interest due to delay in delivery of possession as per Rule 15 of HRERA Rules. He also placed on record, correspondences made with Department of Town & Country Planning regarding status of their application for grant of Occupation Certificate. Copies of the same have been sent to the complainant on her postal address. Said correspondences made with Department of Town & Country Planning annexed as Annexure-B by the respondent reveal that concerned department has pointed out certain shortcomings in application of respondent for grant of Occupation Certificate vide letters dated 15.11.2019 and 21.05.2020. Respondent vide his letters dated 26.05.2020 and 08.06.2020 has informed the concerned department about action taken by him to remove deficiencies as pointed out by the department like No Objection Certificates from fire regarding second staircase; from MOEF; Relevant Certificates for lift, electric installation, by Chartered Accountant; Civil aviation Light; water treatment plant has been provided etc. and requested department to convey quantum of labour cess to be deposited by them.

2. Initiating his arguments, learned counsel for the complainant who appeared in person in the court, briefed the facts of the complaint that

complainant booked a unit in project 'Tuscan Floors' of the respondent promoter located in district Sonapat on 11.08.2010, on payment of Rs. 3 lakhs as booking amount. Respondent allotted T-54, second floor, measuring 1164 sq. fts. vide Floor Buyer Agreement (herein after referred as FBA) dated 08.03.2011. As per clause 30 of FBA, her unit was to be handed over to the complainant by 08.09.2013. Total sale consideration of the unit was Rs. 27,30,878/- against which he has already paid Rs. 24,89,485/- till date.

Learned counsel for the complainant further submitted that complainant/allottee is aggrieved on the ground that an extraordinary delay has been made by the respondent in handing over the possession of the said unit. Even after lapse of more than seven years from the deemed date of delivery i.e. 08.09.2013 as per FBA, respondent has failed to deliver her possession of booked unit. Therefore, complainant is seeking possession of the unit along with interest on account of delay in handing over of the unit as per provision of Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

3. On the other hand, learned counsel for the respondent in his reply dated 17.02.2020 has pleaded that he had filed an application for grant of Occupation Certificate vide letter dated 09.05.2014 but the same has been pending with the concerned department till date, therefore, he has not offered possession of the unit to the complainant. Learned counsel of the respondent



promoter has also failed to disclose any plausible reason as to why his application for grant of Occupation Certificate dated 09.05.2014 has been pending with the concerned department till date. Respondent has filed correspondences made with Department of Town & Country Planning regarding status of their application for grant of Occupation Certificate. Said correspondences made with Department of Town & Country Planning as given in para 1, only reveal that respondent vide his letters dated 26.05.2020 and 08.06.2020 has informed the concerned department about action taken by him to remove deficiencies for grant of Occupation Certificate as pointed out by the department vide letters dated 15.11.2019 and 21.05.2020. It is pertinent to mention here that said documents are mere compliance made by the respondent in fulfilment of certain conditions imposed by Department of Town & Country Planning for grant of Occupation Certificate. In nutshell, Authority observed that application of the promoter respondent was incomplete since it has various shortcomings as pointed out by the concerned department vide its letters dated 15.11.2019 and 21.05.2020 mentioned in Annexure-B. Therefore, such application for grant of Occupation Certificate has no legal value ~~and Occupation Certificate~~ and since the same has not been granted by the concerned department till date, implies that the project is incomplete till date.

As per definition of Occupation Certificate provided under section 2(zf) "occupancy certificate" means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity,, so as is evident from the correspondences made by the promoter respondent with the Department of Town & Country Planning, no such 'Occupation Certificate' has been issued by the concerned department till date, hence for the purposes of this Authority, respondent has not fulfilled his obligations towards allottees as per the THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016. Section 11(4) enshrined in said Act, makes it obligatory for the promoter to obtain the completion certificate or the occupancy certificate, as applicable, from the relevant competent authority and make it available to the allottees. Further under section 17 it mandates issuance of conveyance deed within three months from date of issue of occupancy certificate by promoter in favour of the allottee or the association of the allottees, as the case may be.

Thus, respondent admitted that the department of Town & Country Planning has not granted Occupation Certificate to the promoter respondent and on very same reason, he could not handover possession of the

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unit to the complainant, therefore, it can be inferred that certain deficiencies are still existing in the project.

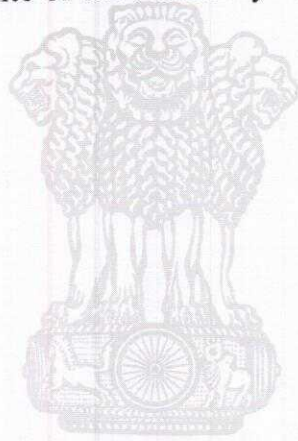
As a result, an unreasonable delay of more than seven years has been made by the respondent in handing over the possession of the said unit from the deemed date of delivery i.e. 08.09.2013. Such delay may be attributed to unprofessional approach of the respondent promoter in handing the project. It appears that respondent promoter is least interested in timely handing over of the possession of units to his allottees. Such casual attitude of the promoter calls for strict action against him under the statute. Therefore, 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 Occupation Certificate of booked unit to the complainant as sought from the Authority . 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.

In the present case, complainant wants 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 31.03.2021. As per calculations made by the office of the Authority, respondent is liable to pay Rs. 14,93,017/- as interest on account of delay in

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delivery of possession to the complainant till 31.03.2021. Hence, respondent is directed to make an upfront payment of Rs. 14,93,017/- as interest for delay in delivery of possession to the complainant within 45 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. 19,294/- to the complainant from date of order till valid handover of the unit i.e. till the date of receipt of Occupation Certificate.

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]