



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### 1. COMPLAINT NO. 1097 OF 2018

Ram Kishan Panchal

....COMPLAINANT

VERSUS

M/s Tulip Housing Pvt. Limited

....RESPONDENT

### 2. COMPLAINT NO. 1100 OF 2018

Amit Panchal

....COMPLAINANT

VERSUS

M/s Tulip Housing Pvt. Limited

....RESPONDENT

### 3. COMPLAINT NO. 5 OF 2019

Sudesh Choudhary

....COMPLAINANT

VERSUS

M/s Tulip Housing Pvt. Limited

....RESPONDENT

**CORAM:**

**Rajan Gupta**  
**Anil Kumar Panwar**

**Chairman**  
**Member**

**Date of Hearing:** 18.02.2021

*(Handwritten signatures)*

**Hearing:** 15th

**Present:** Mr. Himanshu Raj, counsel for complainants through video conference

Mr. Vivek Sethi, counsel for respondent through video conference

**ORDER (RAJAN GUPTA - CHAIRMAN)**

1. The captioned bunch of complaints is being disposed of with this common order. Facts of complaint no. 5 of 2019 are being taken into consideration for the purpose.

2. Facts of the matter complaint no. 5 of 2019 are that the complainant had booked an apartment no. 302 Tower-A, 3rd floor in the project of the respondent on 15.09.2010. On the same date allotment letter was issued as well as BBA was executed. According to BBA deemed date of possession was 30 months plus 6 months from the date of execution of BBA which comes to 15.09.2013. Basic sale price of the apartment was Rs. 28.72 lacs. According to the complainant he has paid Rs. 40,74,912/- to the respondent whereas the respondent admits that complainant has paid Rs. 37,54,617/- and Rs. 3,18,295/- remains payable which in fact was demanded from the complainant alongwith the offer of possession.

Occupation certificate of the project was obtained by the respondent on 26.10.2016 whereafter an offer of possession was given to the complainant on

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14.11.2016. In the meantime, both the parties entered into a Memorandum of Understanding vide which by way of give and take, it was agreed between the parties that the buyers will pay all the dues and execute requisite documents within 30 days from the date of MoU. In the instant case conveyance deed was executed in favour of the complainant on 10.06.2017. Conveyance deeds are yet to be executed in the other two cases because complaints are not coming forward to do the needful.

3. This complaint has been filed with the prayers for awarding interest for the period of delayed possession i.e. from the deemed date of possession upto the actual handing over of possession; to hand over excess amount to the complainant demanded in respect of excess area; to hand over excess amount demanded in form of EDC and IDC; to return illegal parking charges, etc:

4. The respondent has submitted that they have completed the project strictly as per law, in accordance with the approved plans and after obtaining all certifications including Occupation Certificate from the Town & Country Planning Department, Haryana. The respondents have not only obtained the OC but also have applied to the Town & Country Planning Department for grant of completion certificate vide request letter dated 23.12.2016. The apartment of the complainant duly complete in all respect was handed over to the complainant in the year 2016 itself after obtaining Occupation Certificate and the complainant was asked to complete requisite formalities including for execution of

conveyance deed. Majority of the allottees have got the conveyance deed executed. The aforementioned two complainants, however, have not executed conveyance deeds for reasons best known to them. The respondent company is ready to execute the same immediately. The respondent also states that on the request of the complainant, they had waived of the due amount towards interest on account of delayed payment as well as towards additional and better specifications and facilities. For the purpose of settlement an MoU was executed between the parties in which satisfaction of both the parties was duly recorded. The complainant had waived of the due amount towards interest on delayed payments and better specifications against the penalty clause.

4. Further, complainants being fully satisfied had taken lawful possession. In the lead case conveyance deed has already been executed and the entire project has been developed strictly in accordance with law and approved plans. The complainant never raised objections at the time of taking possession or even at the time of execution of conveyance deed, etc. According to the respondent the present complaint are only after-thought aimed at causing harassment to the respondent company.

5. During arguments learned counsel for the complainant draw the attention of the Authority towards information obtained by the complainant under the RTI Act from the office of the DTCP. The DTCP vide letter dated 7.4.2017 in which it has been stated that EDC per acre in the area was Rs. 86.31



lacs per acre. Further, the IDC was notified by the Government vide notification dated 28.01.2008, therefore, IDC on the license no. 315 of 2005 is not applicable.

The respondent on the other hand in response to their reply to the replication in paras 1 and 2 have specifically explained the amount of EDC as well as IDC paid by them to the department in accordance with the demand raised by the department. In the letter of allotment dated 15.09.2010, it was specifically intimated to the complainant that EDC amounting to Rs. 2,51,300/- and IDC of Rs. 28,720/- is being charged from the complainant. According to the respondent same amount has been deposited with the department.

6. Another bone of contention is that according to the complainants the respondents have been selling the stilt car parking as closed car parking and have charged Rs.1,50,000/- for the same. Further grievance of the complainant is that whilst the area sold was 1795 Sq.ft. for 3 BHK units whereas as per their approved lay out the plan area comes out to 1352 Sq.ft.

7. The Authority after having gone through rival contentions observes and orders as follows:

- (i) A similar bunch of the matter pertaining to the same project has come before the Authority for adjudication, in which the Authority had ordered as follows :



“(i) Admittedly the project has received the Occupation Certificate from the State government authorities in 2016, i.e. well before the coming into force of RERA. The apartment has been handed over to the complainants and a conveyance deed has also been executed. The complainants are using the apartments for last two years in the manner they considered appropriate. After handing over of possession and after execution of the conveyance deed substantial part of the contract between the parties stands discharged and cannot be reopened. There remain no more obligation of the parties towards each other. The Authority cannot reopen a concluded contract between the parties. The purpose of the RERA is that the property should be properly developed, its position should be handed over and its ownership rights should be conveyed by way of conveyance deed. Once this much has been done, the relationship between the parties comes to an end and this Authority will have no jurisdiction to reopen this fact of the concluded contract.

(ii) However, it had been noted by the Authority in its earlier orders that this Authority will continue to have jurisdiction in respect of the obligation subsisting on the part of any of the parties towards each other. Such obligation in the circumstances of this case would be of the nature of provision and maintenance of services for a period of 5 years or so. If, there is any deficiency in the services to be provided by the developers, the Authority directs the respondents to bridge those deficiencies. In this case, the complainant have not been able to produce any evidence, despite opportunity is been given to them to do so, to show which all services are deficient in the project. In the absence of production of such an evidence, mere allegations to that effect cannot sustain the case of complainants.



(iii) *Another issue raised by complainants, by way of an additional application dated 28.11.2018, is that excess EDC has been charged by the respondent, and the area of the unit had been arbitrarily changed.*

*With regard to the area change, it is observed that after execution of the conveyance deed this matter cannot be reopened. It is to be presumed that both the parties have concluded the contract after verifying the ground situation and after settling the outstanding amounts paid in respect of the area taken over. At this stage, the Authority cannot reopen a concluded contract.*

*With regard to extra payment of EDC, the complainant have not produced any calculation sheet to substantiate their allegation. According to the respondent, EDC had been collected strictly in accordance with the super area handed over as demanded by the State Government and nothing in excess has been charged from the complainants. Since, the allegations could not be substantiated by the complainants, the same are hereby rejected. The complainants may, however, approach the DTCP and obtain information whether the EDC collected from the complainant have been deposited with the Department or not. If they come across any evidence to substantiate their suspicions, they will be free to seek redressal of their grievances in this regard, from any appropriate authority in a lawful manner, including from this Authority.”*

- (ii) The complainants in the instant case drawing the support from the information obtained under the RTI in April 2017 to substantiate their claim that respondents have demanded excess EDC and they

have illegally charged IDC from them. No information or allegation, has been submitted to shown that EDC in excess of the amount actually deposited in the department has been charged from the allottees. No presumption of excess charging of EDC can be drawn in the absence of documentary evidence. The respondent on the other hand has categorically stated that amount of EDC and IDC deposited with the department was as demanded by them. Now, after having obtained the Occupation Certificate and after having applied for the completion certificate it cannot be presumed that the respondents have failed to discharged their liability towards payment of EDC and IDC. Further, applicable EDC is not a fixed concept. It is charged by the department on estimated basis in the beginning and thereafter upon completion of external services it is charged from the developers on actual basis. Accordingly, the information obtained in the year 2017 under RTI is of no help to prove that the respondents have charged the EDC in excess and IDC illegally. The complainants have failed to prove their case that a lesser amount of EDC and IDC should have been charged whereas the respondents have charged from them in excess.





Also, importantly, respondent had obtained the Occupation Certificate much prior coming into force of RERA. Possession was handed over immediately thereafter and conveyance deeds have either been executed or the respondent is willing to execute it whenever the complainant so desires. In this situation, the Authority would consider that the contractual relations between the parties have come to an end and now the allottee complainants cannot go back in time and challenge that the company has charged excess amount from them or the allottee(s) should be compensated for delay caused in handing over the possession. As per the principles laid down by this Authority, the Authority in the cases of completed and discharged contracts will come in picture only in respect of subsisting obligations which are essentially in the nature of common areas maintenance etc. Bilateral relations between the parties which have come to an end, in this case prior to coming into force of RERA, cannot be reopened by the Authority.


- (iii) In regard to the car parking, admittedly the complainants have been offered stilt car parking. A stilt car parking can be called covered/closed car parking. Moreover, no such dispute had been raised by the complainants at the time of taking over the

possession or thereafter. Now, this issue cannot be reopened at this belated stage. Otherwise also the complainants have admittedly stated that they have been offered stilt car parking which is equivalent to a covered car parking.

Similarly, the Authority is not inclined to re-open the issue regarding increase or decrease in the area after conclusion of the contractual relationship between the parties i.e. after receiving lawful possession and execution of conveyance deed.

- (iv) For the foregoing reasons, all the complaints are **dismissed**. Files be consigned to record room.

Discussed telephonically with Sh. A.K. Panwar, Hon'ble Member-I. Due to Covid-19, he could not sign, however, he consented to the above order.

  
Executive Director,  
HREERA Panchkula  
30.04.2021



  
RAJAN GUPTA  
[CHAIRMAN]

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ANIL KUMAR PANWAR  
[MEMBER]