



Complaint No. 2669 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2669 OF 2019

Amita

....COMPLAINANT/S

VERSUS

M/s TDI Infrastructure Ltd.

....RESPONDENT/S

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 28.04.2021

Hearing: 10th

Present: - Ms. Sonia Madan, Ld. Counsel for the Complainant through VC.

Mr. Shobit Phutela & Shubhnit Hans, Ld. Counsels for the respondent through VC.

ORDER (RAJAN GUPTA-CHAIRMAN)

1. Learned counsel for the complainant stated that complainant has filed an application dated 26.04.2021 seeking direction to the respondent to handover possession of flat to her after issuance of statement of accounts in compliance of order dated 21.01.2021. She has requested the Authority to direct respondent to withdraw demand of illegal charges on account of interest on External Development charges and UTC, Miscellaneous Expenses. She is also seeking clarification regarding computation of Value Added Tax charged from her.

2. The Authority had settled all issues raised by the complainant in the present complaint vide order dated 21.01.2021. Now, Complainant vide her application dated 26.04.2021 has raised additional grievances regarding computation of Rs. 26,398/- charged from her on account of Value Added Tax; demand of illegal charges on account of interest on External Development charges (EDC) and UTC (Basic sale value). The Authority has considered the written as well as oral pleadings of both the parties on these additional issues raised by the complainant. It observes and orders as follows:

i. Value Added Tax:

Value Added Tax is the tax paid to the State Government. On perusal of record, it is inferred that as per

Clause 3 of the agreement provides “the parties agree that the basic sale price of the independent floor shall not include the External Development Charges, Infrastructural Charges, Value Added Tax, Works Contract Tax or such other taxes, levies and /or charges present as well as future along with any enhancements thereof so imposed or levied by the state or any competent authority.....”. Further it reads “ The charges towards VAT, WCT or such other taxes that may be demanded by the government have not been quantified as of now, however the purchaser shall pay the same without any demur or protest as and when the same are demanded by the company.”

Thus, a plain reading of this clause indicates, that the charges on account of VAT were not quantified at the time of agreement but the same were admitted to be payable by the complainant on demand from the company. Since the VAT charges have been quantified and demanded by the company through the final account statement, the same are justified and hence allowed. However, an advice of the tax expert should be obtained by the respondent and communicated to the complainant



along with the detailed justification thereof. Whatever amount is worked out by the taxation expert in this regard shall be paid by the complainant.

ii. **Interest on UTC (Basic sale value):**

Perusal of statement of accounts dated 22.03.2021 shows that respondent has charged Rs. 1,31,464/- as interest on UTC. 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 UTC. Hence, amount charged by the respondent on account interest on UTC which comes to Rs. 1,31,464/- stands quashed.

iii. **Interest on EDC (External development Charges):**

Perusal of statement of accounts dated 22.03.2021 shows that respondent has charged Rs. 7631/- as interest



on EDC. Since EDC are the charges to be paid to the State Government for laying external services of the colony by the State Government agencies. This amount payable to the State Government for whole of the colony is apportioned amongst all the apartments/allottees of the colony. Accordingly, the complainant is liable to pay External Development Charges. In the present case, respondent has charged Rs. 7631/- as interest on EDC. In case respondent is able to show documents proving any delay on part of complainant to pay EDC, complainant will be liable to pay to respondent Rs. 7631/- as interest on EDC or else the same will stand quashed.

Further, respondent is directed to issue fresh statement of accounts in favour of the complainant in compliance of order dated 21.01.2021, after reducing amounts of : Rs. 1,31,464/- charged from the complainant on account of interest on UTC; Rs. 11,800/- on account of Misc. expenses; Rs. 7631/- as interest on EDC in case respondent fails to prove delay on part of the complainant. Fresh statement of accounts shall be prepared by the respondent taking 1308 sq. fts. as super area of the unit in compliance of order dated 21.01.2021.

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During hearing the complainant has requested the Authority to get her the possession of the apartment immediately as she is in dire need of it.

The Authority has considered the matter. In this case occupation certificate has not been received, therefore, as per principles laid down in Complaint Case No. 903 of 2019- Sandeep Goyal Vs. Omaxe Ltd. legally valid offer of possession is not possible to be given. The complainant, however insisted on getting the possession because the apartment is already complete and she is in dire need of it.

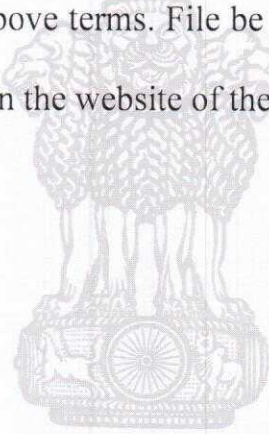
The Authority orders that the complainant can make a choice out of the following two options being given to her :

- (i) The complainant may either wait for receipt of occupation certificate for the project whereafter a legally valid offer of possession will be made to her. The Authority orders that upfront payment of Rs.16,98,386 will be made to her on account of delay caused in offering the possession and further monthly interest @ Rs.22,412/- will be payable to her by the respondent up to the date of legally valid offer of possession.
- (ii) The second option available with the complainant is that she may take possession of the apartment immediately in which case delay interest calculated up to 28th April, 2021 amounting to Rs.16,98,386/- shall be payable to her by respondent. However,

further monthly interest shall not be payable because of complainant having taken possession of the apartment as per her own choice.

The complainant may exercise any of the above option and convey the same to the respondent within 30 days of uploading of this order on the portal of the Authority. The respondent shall take action in accordance with the option exercise by the complainant within 45 days of the communication received from the complainant.

Disposed of in above terms. 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]

DILBAG SINGH SIHAG
[MEMBER]