



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 57 OF 2021

Prabhakar Kumar

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 07.12.2021

Hearing: 6th

Present: - Mr. Prabhakar Kumar, Ld. Counsel for the complainant through
VC.

Mr. Shobhit Phutela, Ld. counsel for the respondent.

ORDER (RAJAN GUPTA-CHAIRMAN)

1. This is 6th hearing of the case. Some of the relevant orders passed by the Authority during the course of hearing of this case are reproduced below:

(A). **3rd hearing dated 05.08.2021**: Facts as narrated by both the parties were recorded in order dated 05.08.2021. Relevant part of order dated 05.08.2021 is reproduced as below:

“1. At the outset complainant stated that he had booked his unit on 05.04.2011 in a project named Tuscan City (Heights), Kundli, Sonapat being developed by the respondent promoter. Unit No. T-2/1003, measuring 1520 sq. ft. was allotted to him on 24.06.2011. He deposited a lump sum amount of Rs. 17,76,913/- on 18.10.2012 under Pre-EMI interest refund Scheme launched by the respondent promoter. Under this scheme, respondent had to refund Pre-EMI interest but respondent promoter refunded less than promised. As per this scheme, respondent had also assured delivery of flat within 24 months of payment of the lump-sum amount which comes to 18.10.2014. Floor Buyer Agreement (hereinafter referred to as FBA) was executed between parties on 14.02.2012. As per FBA, delivery of the flat was to be made within 30 months from the date of agreement, thus deemed date of delivery was in Aug, 2014. He has paid about Rs. 49,63,636/- till date against total sale consideration of Rs. 40,33,292/-.

Grouse of the complainant is that respondent has offered him fit out possession on 06.03.2018, after a delay of approximately four years and that too without obtaining Occupation Certificate. He is further aggrieved on account of the fact that vide said Offer for Fit Out, Possession cum demand letter dated 06.03.2018, he was first time informed about unilateral increase in super area from 1520 sq. ft. to 1808 sq. ft. i.e. by 288 sq. fts. which has put additional financial burden on him. He states that such a huge increase in super area of floor is unreasonable and unjustified and this increase has been made without her consent.

He is also aggrieved by the fact that the respondent has offered possession without obtaining occupation certificate, therefore, he is entitled to interest on account of delay in handing over of possession till the date of receipt of Occupation Certificate by the respondent.

He has also impugned certain amounts unreasonably charged from him as per offer for Fit Out Possession cum demand letter dated 06.03.2018 against following categories : (a) External Development Charges (EDC) Rs. 4,45,869/- (b) Parking charges (VPK) Rs. 1,75,000/- (c) Value Added Tax (VAT) Rs. 37,470/- (d) Service Tax (S. Tax) Rs. 2,45,937/- (e) charges demanded on the pretext of increase in apartment area from 1520 sq. ft. to 1808 sq. ft., and (f) Club Membership Charges(CMC) Rs. 50,000/- demanded as club



charges when there is no club is in existence. He stated that these illegal charges deserve to be quashed. He is also seeking refund of balance Pre-EMI interest as assured by respondent promoter.

In addition to aforesaid grievances, he also stated that respondent has miserably failed in providing infrastructural facilities like permanent electricity connection, sewage treatment plant, water treatment plant, maintenance of green area etc.

2. Office has brought to the notice of the court that similar issues regarding lack of infrastructural facilities in 'Tuscan City' against same respondent are pending before this Court in Complaint No. 2676 of 2019 and others, which are fixed for 21.09.2021.”

(B) **5th hearing dated 14.10.2021:** Respondent was directed to file information regarding increase in super area of the unit; status of Occupation Certificate; Status of development of infrastructural facilities in the project; Photographs showing covered parking facility and; Statement of accounts reflecting the amount receivable from the complainant and the amount payable to him till date as interest on account of delay in handover of the possession as per Rule 15 of HRERA Rules, 2017 with an advance copy to the complainant in form of affidavit. Relevant part of order dated 14.10.2021 is reproduced as below:

“1. On 05.08.2021, learned counsel had narrated facts of the case and also stated his grievances against respondent company. Same were recorded vide order dated 05.08.2021. The grievances raised by the complainant are two-fold: first set relates to the issues concerning the unit allotted to him and second set of grievances are regarding lack of infrastructural facilities in 'Tuscan City'.



2. On last date of hearing i.e. 21.09.2021, Authority had directed respondent to file component-wise comparative super area chart of the complainant's unit in accordance with principles laid down in Complaint No. 607 of 2018 titled as Vivek Kadyan Vs M/s TDI Infrastructure Ltd.; and statement of accounts reflecting the amounts receivable and payables along with interest payable to complainant on account of delay in handover of legally valid possession.

3. Respondent has failed to file aforesaid information. Learned counsel for the respondent is seeking more time to file it. Respondent is also directed to file following information with an advance copy to the complainant in form of affidavit:

- i. Component wise super area chart as per original sanctioned building plans; In case, any revision took place, then, super area components will be given as per revised plans also.
- ii. Statement of accounts reflecting the amount receivable from the complainant and the amount payable to him till date as interest on account of delay in handover of the possession as per Rule 15 of HRERA Rules, 2017;
- iii. Information regarding status of Occupation Certificate along with its copy in case Occupation Certificate is received;
- iv. Status of development of infrastructural facilities in the said project as per approved service plan estimates.
- v. Coloured Photographs showing covered parking facility/space allotted to complainants."

2. Today, learned counsel for the respondent has filed information in compliance of order dated 14.10.2021.

3. In furtherance of arguments advanced by learned counsels for both the parties on 05.08.2021 and perusal of record Authority observes and orders as follows:



i) **Club Membership Charges:**

In regard to the club membership charges the complainant states that although he has paid club charges on 05.09.2019 but the club does not exist at all. It is ordered that since club is not in existence at present, the demand on account of club membership charges is unjustified and stands quashed. Whenever a club for this project is built and becomes operational the complainant shall be liable to pay the due amount.

ii) **Increase In Super Area:**

The complainant is aggrieved on account of unilateral increase in area of the apartment from initial booked area of 1520 sq. fts to 1808.80 sq. fts i.e. increase of about 288.80 sq. fts. Authority vide order dated 14.10.2021 had directed respondent to file component wise super area chart as per sanctioned building plans. Respondent has failed to file the same till date. Learned counsel for the respondent stated that super area has been reduced from 1808.80 sq. fts. to 1702.80 sq. fts. as per principles laid down by Authority in Complaint case No. 607 of 2018 titled Vivek Kadyan vs. M/s TDI Infrastructure Pvt. Ltd. Complainant has accepted



1702.80 sq. fts. as revised super area. Therefore, respondent is directed to return the excess amount received from the complainant on account of increased super area.

iii) Car Parking Charges:

Another grievance of the complainant is that the charges levied for car parking space are unreasonable and respondent has charged them from him without actually allotting space for car parking. Vide his application dated 03.12.2021, respondent has placed coloured photographs showing car parking space provided allottees in the project.

As per clause 3 of Annexure -I of FBA states that Covered car parking area has to be allotted to the purchaser for his exclusive use. Further Construction Plan at Annexure -II of FBA mentions that respondent will charge 5% + car parking + club membership at the time of possession. Thus, Rs. 1,75,000/- charged by the respondent vide offer for fit out possession dated 06.03.2018 is valid subject to allotment of specific car parking area to complainant. On perusal of photographs furnished by respondent vide submissions dated 03.12.2021, it is apparent that car parking area does not bear any numbering. Respondent has failed to specify which area



/number has been allotted to the complainant. At best it shows a general car parking space provided to allottees in the project. Therefore, respondent is directed to allot a specified car parking pace to the complainant for her exclusive use, failing which respondent shall return amount charged for car parking to the complainant.

iv) **External Development Charges:-**

External Development charges 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.

v) **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.

vi) **Service Tax:**

Service tax is the tax paid to the Central 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, Service Tax levied by central

government 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, Service tax 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 Service Tax 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 Service tax charges have been quantified and demanded by the company through the final account statement, the same are justified and hence allowed.

vii) Refund of balance Pre-EMI interest:

Complainant has stated that he deposited a lump sum amount of Rs. 17,76,913/- on 18.10.2012 under Pre-EMI Interest Refund Scheme launched by the respondent promoter. As per this scheme, respondent had assured delivery of flat within 24 months of payment of the lump-sum amount which comes to



18.10.2014. Under this scheme, respondent had to refund Pre-EMI interest but respondent promoter refunded less than promised amount. Therefore, he is seeking refund of balance Pre-EMI interest as assured by respondent promoter.

Learned counsel for the respondent stated that no such scheme was launched by the respondent. He further stated that even complainant has failed to file any document qua the alleged scheme. Authority asked complainant to email documents corroborating alleged scheme but no such documents were either furnished in the Court or via email afterwards. Therefore, allegation of the complainant that respondent has refunded Pre-EMI interest less than promised cannot be accepted on account of lack of evidence. Thus, allegation of the complainant in this regard stand rejected.

viii) **Advance Monthly Maintenance charges:**

As per clause 14 (b) of apartment buyer agreement “ The use of common areas and facilities shall always be subject to the timely payment of maintenance charges. The complainant argued that the maintenance charges can only be charged by the respondent after actual handover of possession to him. Admittedly, complainant has taken actual possession of the unit on 05.02.2019, therefore, complainant is liable to pay

maintenance charges with effect from 05.02.2019. ~~***~~
~~complainant.~~

ix) Interest on amount paid on account of delay in Offer of possession/ Delivery:

Admittedly, the FBA between the parties was executed on 14.02.2012. As per Agreement delivery was to be made within 30 months from the date of execution of FBA. Thus, as per FBA, the deemed date of possession of the unit was in Aug, 2014. Complainant stated that he deposited a lump sum amount of Rs. 17,76,913/- on 18.10.2012 as per Pre-EMI interest refund scheme launched by the respondent promoter. Respondent had also assured delivery of flat within 24 months of payment of the lump-sum amount as per said scheme which comes to 18.10.2014.

Since no evidence has been placed on record by complainant regarding aforesaid scheme and even deemed date of delivery as per FBA comes to 14.08.2014 which is actually earlier than promised date as per aforesaid scheme, therefore, deemed date of delivery of possession is taken as 14.08.2014. learned counsel for the respondent stated that respondent had applied for Occupation Certificate on 09.05.2014 and is hopeful

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that the same will be granted soon as all formalities have already been completed.

Learned counsel for the respondent further argued that complainant is not entitled to interest on account of delay in delivery of possession after 05.02.2019 because the complainant had signed No objection Certificate for handover of possession of unit on 05.02.2019 and has been enjoying possession of the unit since thereafter.

This plea of respondent is justified as in the present case, complainant has voluntarily taken possession of the flat with full knowledge that Occupation Certificate of the same has not been granted. He is enjoying possession of the flat from 05.02.2019, therefore, complainant is entitled to interest on account of delay in handover of possession from deemed date of delivery till actual date of receipt of possession i.e. 14.08.2014 till 05.02.2019.

Learned counsel for the respondent furnished final Statement of Accounts dated 13.10.2021 and stated that same may be read instead of statement of accounts dated 09.11.2021 as it is incorrect.



It is pertinent to mention here that although complainant has paid Rs. 49,63,636/- to the respondent till date but he had paid Rs.37,41,550/- till 18.10.2012 and further Rs.11,72,086/- on 18.03.2019. Since complainant is entitled to interest for delay on account of delay in handover of possession from deemed date of delivery till actual date of receipt of possession i.e. 14.08.2014 till 05.02.2019, therefore, complainant per receipts has paid total amount of Rs 37,41,550/- till 05.02.2019. This amount includes even the amount of Rs. 4,45,869/- for EDC/IDC and Rs. 37,470/- for VAT. The amount of EDC/IDC and VAT is collected by the promoter for payment to the department/authorities entitled to receive it for carrying their statutory obligations. If a builder does not pass on this amount to the concerned department, then interest becomes payable to the department or authority concerned and the defaulting builder in such eventuality will himself be liable to bear the burden of interest. A builder will be therefore not liable to pay delay interest to the allottee on the amounts collected for passing over to other department/authorities concerned. The delay interest accordingly deserves to be calculated only on amount of Rs 32,58,211/- (Rs. 37,41,550/- – Rs. 4,45,869/- – Rs. 37,470/-).

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As per calculations by Accounts Branch amount payable by respondent to the complainant on account of interest for delay in handover of possession of the unit has been worked out to Rs.13,58,165/-. Thus, the respondent is directed to pay the complainants an amount of Rs 13,58,165/- as delay interest for the period from 14.08.2014 to 05.02.2019 within 90 days of uploading of this order on the website of the Authority.

4. The grievances raised by the complainant are two-folds: first related to the issues concerning the unit allotted to him which have been discussed in detail and stands disposed today, and second, grievance is regarding lack of infrastructural facilities in 'Tuscan City'. These grievances are similar to grievances being already adjudicated upon by the Authority in Complaint No. 2676 of 2019. Since issues regarding lack of infrastructural facilities have already been raised by Resident Welfare Association of 'Tuscan City' in Complaint no. 2676 of 2019 and the same are being adjudicated by the Authority, therefore, all issues regarding lack of infrastructural facilities will be decided in Complaint No. 2676 of 2019 and complainant may join aforesaid Association for redressal of issues relating to infrastructural facilities.



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



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH SIHAG
[MEMBER]