



Complaint No. 95 Of 2021

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 95 OF 2021

Parveen Kumar

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited.

....RESPONDENT(S)

**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 07.12.2021**

**Hearing: 4<sup>th</sup>**

**Present: -** Ms. Varuna Singh, Ld. counsel for the complainant through VC.  
Mr. Shobit Phutela, Ld. counsel for the respondent.

### **ORDER (RAJAN GUPTA-CHAIRMAN)**

1. Learned counsel for the complainant stated that complainant had booked a unit in a project named 'Espania Royale Floors', Sonapat being



developed by the respondent promoter on 10.03.2012. A residential Unit No. RF-24/Duplex, measuring 1499 sq. ft. was allotted to the complainant. Floor Buyer Agreement (hereinafter referred to as FBA) was executed between the parties on 18.03.2013. 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 September, 2015. He has paid an amount of Rs. 37,10,526/- till date against basic sale price of Rs. 34,99,999/-.

Main grouse of the complainant is that despite lapse of about six years from promised time of delivery, respondent has failed to deliver him possession till date. Therefore, he is seeking delivery of possession of the unit along with interest for delay till receipt of Occupation Certificate.

2. On the other hand, learned counsel for respondent while admitting the payment made by complainant stated that respondent had applied for grant of Occupation Certificate on 31.03.2017 but same has not been granted to them by Department of Town & Country Planning. Learned counsel for respondent produced an offer of possession for 'fit out' dated 03.04.2021 in the Court today. He stated that respondent had issued said offer letter on 03.04.2021 but complainant has not come forward to take possession till date. Respondent admitted payment of Rs. 37,10,526/- by complainant.

3. After hearing both parties and perusal of records of the case, Authority observes that since offer for fit out possession dated 03.04.2021 is sans



Occupation Certificate, therefore, it could not be termed a proper and legal offer of possession. It is inferred that the application filed for issuance of Occupation Certificate vide letter dated 31.03.2017 by the respondent promoter was defective due to which Department of Town & Country Planning has not granted Occupation Certificate till date. In these circumstances, it is concluded that a proper and lawful offer of possession is yet to be made. Accordingly, respondent promoter is liable to pay interest on account of delay caused in handing over of possession from the deemed date of possession till the actual / legally valid delivery of possession of booked apartment is made to the complainant after obtaining Occupation Certificate.

Further as per provisions of section 18 of The RERA Act, 2016, the accrued interest up to the date of passing this order shall be paid upfront within 90 days and monthly interest thereafter shall also be paid. Both the amounts will be worked out as per Rule 15 of the HRERA Rules, 2017.

Admittedly, complainant has paid total amount of Rs 37,10,526/- which includes the amount of Rs.4,27,515/- towards EDC/IDC and Rs. 19,189/- 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 32,63,822/- (Rs 37,10,526 – Rs.4,27,515/- – Rs 19,189/-).

Since complainant wishes to wait for delivery of possession till offer of possession after obtaining Occupation Certificate by the respondent, therefore, he shall be entitled to a further amount of delay interest till a legally valid possession is offered after obtaining Occupation Certificate from department concerned. As per calculations made by Accounts Branch, the amount payable by respondent to the complainant on account of interest for delay in handover of possession of the unit up to the date of passing of this order has been worked out to Rs. 17,70,786/- .The Authority orders that upfront payment of Rs.17,70,786/- will be made to complainant on account of delay caused in offering possession within 90 days and further monthly interest @ Rs. 25295/- will be paid to complainant by the respondent w.e.f. 07.12.2021 till the date a legally valid offer of possession is made.

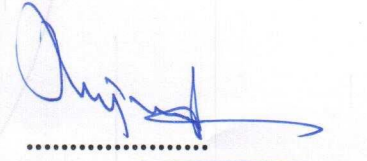
4. On perusal of said offer of possession for fit out dated 03.04.2021, it has been observed by the Authority that respondent has increased the super area of the unit from 1499 sq. fts. to 1783.81 sq. fts. Said issue regarding increase in super area has already been dealt by the Authority in Complaint case No. 607

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**of 2018 titled Vivek Kadyan vs. M/s TDI Infrastructure Pvt. Ltd.** Respondent is directed to follow principles laid down by the Authority in Complaint No. 607 of 2018 titled Vivek Kadyan vs. M/s TDI Infrastructure Pvt. Ltd. and charge complainant for super area strictly as per principles laid down in said complaint and return excess amount received from the complainant on account of increased super area. In case respondent fails to follow aforesaid principles formulated for calculation of super area, complainant will be at liberty to approach this Authority for resolution of the same.

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



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**RAJANGUPTA**  
**[CHAIRMAN]**



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