



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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COMPLAINT NO. 3020 OF 2019

Manjit Singh Rana

....COMPLAINANT

VERSUS

M/s TDI Infrastructure Ltd.

....RESPONDENT

COMPLAINT NO. 3021 OF 2019

Sushil Kumar

....COMPLAINANT

VERSUS

M/s TDI Infrastructure Ltd.

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 07.12.2021

Hearing: 10th

Present: - Mr. Sushil Kumar, Ld. Counsel for the complainants through
VC along with Mr. Manjeet Singh Rana, complainant.
Mr. Shobit Phutela, Ld. counsel for the respondent.

ORDER (RAJAN GUPTA-CHAIRMAN)

1. The captioned complaints involve similar issues and pertain to the same project of the respondent, therefore these complaints are being taken up together and a common order is being passed. Facts of the lead case in **Complaint No. 3020 of 2019 titled as Manjit Singh Rana vs M/s TDI Infrastructure Ltd.** are being taken into consideration for disposal of both cases.

2. This is 10th 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). **7th hearing dated 12.08.2021**: Facts as narrated by complainants were recorded in order dated 12.08.2021. Relevant part of order dated 12.08.2021 is reproduced as below:

“3. Narrating facts of their case, learned counsel for the complainants stated that units were booked on 23.02.2011 and 27.09.2010 respectively in the respondent's project named Tuscan City (Heights), Kundli, Sonapat. Unit No. 201 in tower 11, and unit no. 102 in tower 10, measuring 1080 sq. ft. were allotted to complainants vide Apartment Buyer's Agreement (herein after referred as ABA) dated 25.01.2014 & 02.08.2011. As per ABA, delivery of the units was to be made within 30 months from the date of agreement, thus deemed date of delivery was 25.07.2016 and 02.02.2014 respectively. They have paid approximately Rs.35,71,825/- out of total sale consideration Rs. 29,16,179/- and Rs. 33,32,382/-out of total sale consideration Rs.25,07,220/- respectively.

Grouse of the complainants in both cases is that respondent after a delay of approximately 3 1/2 and 4 1/2 years, has offered them fit out possession vide Offer for Fit Out Possession cum demand letter dated 03.01.2019 & 25.06.2018 respectively, and that too without obtaining

Occupation Certificate. They are further aggrieved on account that respondent vide aforesaid Offer for Fit Out Possession cum demand letters, they were first time informed about unilateral increase in super area from 1080 sq. ft. to 1285.20 sq. ft. i.e. by 205 sq. ft. which has put additional financial burden on them. They have stated that such a huge increase in super area of units without their consent is unreasonable and unjustified and the same should be refunded.

Possession Certificate was issued to them by respondent on 01.02.2019 & 14.08.2018 respectively and they shifted in their units in April, 2019 and Aug, 2018 respectively. Complainants are aggrieved by the fact that the respondent has offered possession without obtaining Occupation Certificate, therefore, they are entitled to interest on account of delay in handing over of possession till the date of receipt of Occupation Certificate by the respondent. They are also seeking issuance of conveyance deed of their respective units.

They have also impugned certain amounts unreasonably charged from them as per offer for Fit Out Possession cum demand letter dated 03.01.2019 & 25.06.2018 respectively against following categories : (a) External Development Charges (EDC) Rs. 3,16,802/- (b) Electrical & Fire Fighting Charges (EEFC) Rs. 3,32,715/- (c) Preferential Location Charges (PLC) Rs. 2,16,497/- & 1,42,313/- respectively (d) Miscellaneous Charges (ME) Rs. 11,800/- (e) Interest Free maintenance Security (SEC) Rs. 20,000/- (f) Parking charges (VPK) Rs. 2,09,000/- & Rs. 1,82,875/- respectively without allotting covered parking space (g) charges demanded on the pretext of increase in apartment area from 1080 sq. ft. to 1285.20 sq. ft., and (h) Club Membership Charges (CMC) Rs. 50,000/- demanded as club charges when there is no club is in existence.


4. In addition to aforesaid grievances, they 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.

5. Today, complainants have prayed for refund of amount of Rs. 50,000/- each charged from them on account of club membership when the club is not functional. Learned counsel for the respondent has stated that respondent has constructed one club for the whole project of TDI City which is fully functional. Complainants have stated that since they do not wish to use club facility, so, the amount of Rs. 50,000/- each deposited by them on account of club membership charges be refunded to them. Since, complainants do not want to use club facility, therefore, respondent is directed to refund said amount of Rs. 50,000/- (each) charged from them on account of club membership."



(B) **9th 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 complainants and the amount payable to them till date as interest on account of delay in handover of the possession as per Rule 15 of HRERA Rules, 2017. Relevant part of order dated 14.10.2021 is reproduced as below:

- “1. On 12.08.2021, learned counsel had narrated facts of both cases and also stated grievances of both the complainants against respondent company. Same were recorded vide order dated 12.08.2021. The grievances raised by the complainants are two-fold: first set relates to the issues concerning the unit allotted to them and second set of grievances are regarding lack of infrastructural facilities in ‘Tuscan City’. Authority vide aforesaid order had directed respondent to file following information with an advance copy to the complainant in form of affidavit.
2. 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.”



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

4. Learned counsel for the respondent stated that respondent had applied for grant of Occupation Certificate on 09.05.2014 but the same has not been granted to them by the Department of Town & Country Planning till date. He stated that Possession Certificates were issued to complainants on 01.02.2019 & 14.08.2018 respectively and they shifted in their units in April, 2019 and Aug, 2018 respectively. Since complainants have been residing in their units since April, 2019 and Aug, 2018 respectively, therefore, respondent is not liable to pay interest for delay in delivery of possession till receipt of Occupation Certificate to the complainants. Payments made by complainants have been admitted by respondent. Respondent has reduced super area in compliance of order dated 14.10.2021 from 1285.20 sq. fts. to 1156.70 sq. fts for both units as reflected in statement of accounts dated 09.11.2021. He has placed on record component wise super area chart, revised statement of accounts dated 09.11.2021 and photographs of car parking vide application dated 03.12.2021. Learned counsel for the respondent stated that car parking facility has been provided to the complainants as visible in photographs annexed as Annexure A-5. He apprised the Court that club is in existence and fully operational.



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

i) **Club Membership Charges (CMC):**

In regard to the club membership charges the complainants stated that although they have paid club charges but the club does not exist at all. Learned counsel has stated that club is in existence and operational but no documents/ photographs confirming existence and functioning of the club has been placed on record by the respondent. So, it is presumed that club is not in existence. Therefore, 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 complainants shall be liable to pay the due amount.

ii) **Increase In Super Area:**

The complainants are aggrieved on account of unilateral increase in area of their apartment from initial booked area of 1080 sq. fts to 1285.20 sq. fts i.e. increase of

about 205.20 sq. fts. Authority vide order dated 14.10.2021 had directed respondent to file component wise super area chart as per sanctioned building plans. Learned counsel for the respondent stated that super area of both units have been reduced from 1285.20 sq. fts to 1156.70 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. Complainants have accepted 1156.70 sq. fts. as revised super area. Therefore, respondent is directed to return the excess amount received from the complainants on account of increased super area.

iii) **Car Parking Charges (VPK):**

Another grievance of the complainants is that the charges levied for car parking space are unreasonable and respondent has charged them from them without actually allotting space for car parking. Vide his application dated 03.12.2021, respondent has placed coloured photographs showing car parking space provided to complainants 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. 2,09,000/- & Rs. 1,82,875/- respectively charged by the respondent for car parking is valid subject to allotment of specific car parking area to complainants.

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 complainants. At best it shows a general car parking space provided to allottees in the project. Therefore, respondent is directed to allot specified car parking space to the complainants for their exclusive use, failing which respondent shall return amount charged for car parking to the complainants.

iv) **External Development Charges (EDC):-**

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 complainants are liable to pay External Development Charges.

v) **Miscellaneous charges (ME):**

The respondent informed that this amount has been charged on account of the fee payable to the advocate for discharging registration formalities etc. It is ordered that in case complainants do not wish to engage any advocate to carry out registration formalities, the demand made by the respondent towards "Stamp Duty/Miscellaneous charges" shall be withdrawn.

vi) **Interest Free Maintenance Security (SEC):**

Interest Free Maintenance Security is the money collected from all the allottees of a collective sum of money levied on the allottees of a residential/commercial project by the builder for present or future maintenances of the colony,

on heads like lift maintenance, park development, security enhancement or any other maintenance works. The builder will keep the money under their custody, till RWA (Residential Welfare Association) is formed and thereafter, the builder has to transfer the money to the association. Thus, amount charged from complainants on account of "Interest Free maintenance Security" is valid.

vii) **Electrical and Fire Fighting Charges (EFFC):**

Another grievance of the complainants is that the charges levied for EFFC are unreasonable, therefore same may be quashed. Learned counsel for the respondent stated that EFFC has been levied as per terms of the FBA.

It is the sole responsibility of the promoter to develop both basic infrastructure of the project like provisioning of roads, sewage system, storm water disposal, electricity connection, water supply etc. Since the promoter has signed an agreement with Department of Town and Country Planning to provide electricity and to install the Fighting Equipment at the time of issuance of license, therefore, it is mandatory obligation of promoter to provide the same to the allottees within the licensed area. Cost of such mandatory obligations of the promoter have



already been included in the basic sale price of the units. Therefore, promoter cannot charge amount for EEFC exclusive of basic sale price of the unit.

Thus, Authority observes that respondent is liable to provide for Electric Fire Fighting equipments and basic cost of apartment includes cost of Electric Fire Fighting charges. Therefore, levy of EEFC over and above basic price on complainants is illegal and hence EEFC charges are quashed. Respondent is directed to return amounts charged from complainants on account of said charges.

viii) **Interest on amount paid on account of delay in**

Offer of possession/ Delivery:

Admittedly, the FBA between the parties were executed on 25.01.2014 & 02.08.2011. 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 units were on 25.07.2016 and 02.02.2014 respectively. Learned counsel for the respondent stated that respondent had applied for Occupation Certificate on 09.05.2014 and is hopeful that the same will be granted soon as all formalities have already been completed.

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Learned counsel for the respondent further argued that complainants are not entitled to interest on account of delay in delivery of possession after 01.02.2019 & 14.08.2018 because Possession Certificate for said units have already been issued on 01.02.2019 & 14.08.2018 respectively and complainants have been enjoying possession of their respective unit since thereafter.

This plea of respondent is justified as in both cases, complainants have voluntarily taken possession of the flat with full knowledge that Occupation Certificate of the same has not been granted. They are enjoying possession of their respective units from 01.02.2019 & 14.08.2018 respectively, therefore, complainants are 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. 25.07.2016 and 02.02.2014 respectively till 01.02.2019 & 14.08.2018 respectively. Complainants shall be liable to pay maintenance charges with effect from 01.02.2019 & 14.08.2018 respectively.

Respondent has annexed statement of accounts dated 09.12.2020 and 09.11.2021 at Annexure -R-5 of submissions dated 26.03.2021 and Annexure A-2 of

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submissions dated 03.12.2021 respectively in Complaint no. 3020 of 2019. These statements reflect that complainant has paid Rs. 38,31,749/- and Rs. 35,56,759/- respectively. As per receipts and Appendix-DD, complainant has paid Rs. 35,71,825/- in Complaint no. 3020 of 2019. Therefore, Rs. 35,71,825/- is taken into account for calculation of interest.

Similarly, respondent has annexed statement of accounts dated 09.12.2020 and 09.11.2021 at Annexure -R-5 of submissions dated 26.03.2021 and Annexure A-2 of submissions dated 03.12.2021 respectively in Complaint no. 3021 of 2019. These statements reflect that complainant has paid Rs. 37,31,633/- and Rs. 34,56,633/- respectively. As per receipts and Appendix-DD, complainant has paid Rs. 33,32,382/- in Complaint no. 3021 of 2019. Therefore, Rs. 33,32,382/- is taken into account for calculation of interest.

Thus, Rs. 35,71,825/- and Rs. 33,32,382/- has been paid by the complainants in complaint no. 3020 and 3021 of 2019 to the respondent till 01.02.2019 and 14.08.2018. In complaint No. This amount includes even the amount of Rs. 2,81,865/- and Rs. 3,16,802/- respectively for EDC/IDC and Rs. 11,754/- and Rs. 12,802/- respectively for VAT. The amount of EDC/IDC and VAT is collected by the promoter

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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. Thus, the delay interest accordingly deserves to be calculated only on amount of Rs 32,78,206/- (Rs. 35,71,825/- – Rs. 2,81,865/- – Rs. 11,754/-) in Complaint No. 3020 of 2019 and Rs. 30,02,778/- (Rs. 33,32,382/- – Rs. 3,16,802/- – Rs. 12,802/-) in complaint no. 3021 of 2019.


As per calculations by Accounts Branch amount payable by respondent to the complainants on account of interest for delay in handover of possession of the unit has been worked out to Rs. 6,39,599/- and Rs. 8,35,569/-. Thus, the respondent is directed to pay the complainants amount of Rs. 6,39,599/- and Rs. 8,35,569/- as delay interest for the period from 25.07.2016 and 02.02.2014 respectively till 01.02.2019 & 14.08.2018 respectively in Complaint No. 3020 of 2019 and 3021 of 2019 respectively within 90 days of uploading of this order on the website of the Authority.



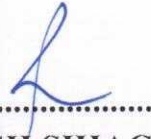
6. Learned counsel for the complainants argued that the maintenance charges can only be charged by the respondent after actual handover of possession to him. Admittedly, complainants have taken actual possession of their unit on 01.02.2019 & 14.08.2018 respectively, therefore, complainants are liable to pay maintenance charges with effect from 01.02.2019 & 14.08.2018. Both complainants did not press upon the issue of Preferential Location charges, therefore, on account of lack of documents as well as arguments qua this issue, same is not being dealt / decided by the Authority.

7. The grievances raised by the complainants are two-folds: first related to the issues concerning the units allotted to them 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 complainants 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.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]