



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1117 OF 2020

Sh. Chander Prakash Popli

...COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 07.12.2021

Hearing: 8th

Present: - Mr. Sushil Kumar, Ld. Counsel for the complainant and Mr. Chander Prakash Popli, Complainant through VC.

Mr. Shobit Phutela, Ld. Counsel for the respondent.

ORDER (RAJAN GUPTA-CHAIRMAN)

1. This is 8th 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). **6th hearing dated 21.09.2021:** Facts as narrated by both the parties were recorded in order dated 21.09.2021. Relevant part of order dated 21.09.2021 is reproduced as below:

"1. At the outset complainant stated that he had booked his unit on 19.04.2011 in the project named 'Tuscan Heights', of the respondent situated at Kundli, Sonapat. Flat No. T-2/704, measuring 1390 sq. ft. was allotted to him on 27.07.2011. Apartment Buyer Agreement (hereinafter referred to as ABA) was executed between parties on 02.08.2011. 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 Feb, 2014. He has paid Rs. 40,86,807/- till date against sale consideration of Rs. 30,32,980/-.

Grouse of the complainant is that respondent has offered him fit out possession of the flat on 06.03.2018, after a delay of approximately four years and that too without obtaining Occupation Certificate. He further stated that respondent company has raised demand of Rs. 8,96,087/- vide letter dated 20.04.2018, out of which Rs. 5,10,840/- were charged on account of increase in super area from 1390 sq. ft. to 1654 sq. ft. Thus, respondent has unilaterally increased the super area from 1390 sq. ft. to 1654 sq. ft. i.e. by 264 sq. fts., which has put additional financial burden on him. He states that such a huge increase in super area of floor without his consent is unreasonable and unjustified.

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 legally valid handover of possession i.e. till receipt of Occupation Certificate.

He also stated that amount of Rs. 50,000/- charged from him on account of Club Membership Charges(CMC) is unreasonable because no club is in existence.

He further stated that since respondent had refused to hand over possession of the flat to him till he paid outstanding amounts against him therefore, under compelling circumstances, he deposited said amounts and shifted in his flat on 01.01.2019.

2. Aggrieved by aforesaid demands and also due to lack of basic facilities in the project, complainant sent a legal notice to respondent on 10.09.2020 seeking refund of aforesaid excess amounts charged from him and payment of interest on account of delay in handing over of the flat. No response has been received from respondent till date. Therefore, complainant is seeking issuance of conveyance deed of the flat along with interest on account of delay in handing over of the unit and refund of excess amounts charged from him on account of increase in super area amounting to Rs. 5,10,840/- and club charges along with interest amounting to Rs. 61,250/-.

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, two fully operational lifts in tower, maintenance and security etc.

3. Complainant, through the present case, has raised two fold grievances: first set of grievances are personal in nature and second set of grievances are regarding lack of infrastructural facilities in 'Tuscan City' which 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, the present complaint will stand merged with Complaint No. 2676 of 2019 after redressal of personal grievances of complainant.

4. Learned counsel for the respondent has sought some time to file his reply with respect to grievances of complainant regarding amounts charged from him on account of increase in super area. Learned counsel for the respondent stated that although club is in existence and fully functional but in case complainant does not want to avail club membership, amount charged from him on account of club membership will be refunded. Complainant may contact respondent company for refund of said amount."

(B) **7th 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 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 21.09.2021, learned counsel had narrated facts of the case and also stated his grievances against respondent company. Same were recorded vide order dated 21.09.2021. 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."

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 21.09.2021 and perusal of record Authority observes and orders as follows:

i) **Club Membership Charges:**

In regard to club membership charges the complainant states that although he has paid club charges till June, 2018 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 1390 sq. fts to 1654 sq. fts i.e. increase of about 264 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 1654 sq. fts. to 1488 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 1488 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) **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 complainant is liable to pay External Development Charges.

iv) **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 complainant does 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.

v) **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,

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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 complainant on account of "Interest Free maintenance Security" is valid.

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

Another grievance of the complainant 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

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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 complainant is illegal and hence EEFC charges are quashed. Respondent is directed to return amounts charged from complainant on account of said charges.

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

Offer of possession/ Delivery:

Admittedly, the FBA between the parties were executed on 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 unit was 02.02.2014.

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.

Learned counsel for the respondent further argued that complainant is not entitled to interest on account of delay in delivery of possession after 23.06.2018 because possession of said unit has already been handed over on 23.06.2018 and complainant has been enjoying possession of his unit thereafter.

This plea of respondent is justified as complainant has voluntarily taken possession of the flat with full knowledge that Occupation Certificate of the same has not been received. He is enjoying possession of his unit from 23.06.2018, 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. from 02.02.2014 till 23.06.2018. Complainant shall also be liable to pay maintenance charges with effect from 23.06.2018.

Respondent has annexed statement of accounts dated 24.03.2021 and 09.11.2021 at Annexure -R-5 of the submissions dated 26.03.2021 and Annexure A-2 of the submissions dated 03.12.2021 respectively. These statements reflect that complainant has paid Rs. 44,73,689/- and Rs. 41,12,689/- respectively. Admittedly, as per



Appendix-DD, complainant has paid Rs.40,86,807/- till 13.06.2018. Therefore, Rs.40,86,807/- is taken into account for calculation of interest.

This amount includes even the amount of Rs. 3,42,635/- towards EDC/IDC and Rs. 27,609/- 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. Thus, the delay interest accordingly deserves to be calculated only on amount of Rs 37,16,563/- (Rs. 40,86,807/- – Rs. 3,42,635/- – Rs. 27,609/-).

As per calculations made by Accounts Branch, the amount payable by respondent to complainant on account of interest for delay caused in handing over of possession of the unit has been worked out to Rs. 11,98,497/-. Thus, the respondent is directed to pay the complainant amount

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of Rs. 11,98,497/- as delay interest for the period from 02.02.2014 respectively till 23.06.2018 within 90 days of uploading of this order on the website of the Authority.

6. Learned counsel for complainant argued that maintenance charges can only be charged by the respondent after actual handover of possession to him. Admittedly, complainant had taken actual possession of his unit on 23.06.2018, therefore, complainant is liable to pay maintenance charges with effect from 23.06.2018. Complainant 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.

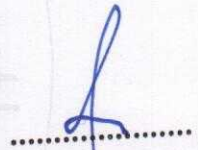
7. The grievances raised by complainant are two-folds: first related to the issues concerning the unit allotted to him which have been discussed in detail and stands disposed today, and second, grievance is regarding lack of infrastructural facilities in 'Tuscan City'. These grievances are similar to 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.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]