



Complaint No. 3044 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 3044 OF 2019

Raj Kumar

....COMPLAINANT/S

VERSUS

M/s TDI Infrastructure Ltd.

....RESPONDENT/S

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 07.12.2021

Hearing: 9th

Present: - Mr. R. S. Malik, Ld. counsel for the complainant through VC.

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

ORDER **(RAJAN GUPTA-CHAIRMAN)**

1. The original allottee had booked a flat in respondents' project named "Espania Floors" situated at Sonapat. Unit EF-67/Duplex, measuring 1224 sq. ft. was allotted to the original allottee. Floor Buyer Agreement (hereinafter referred to as FBA) was executed between the parties on 09.02.2012. As per FBA, the possession of the floor was to be offered by 09.08.2014. Floor was transferred in favour of complainant vide transfer certificate dated 29.12.2014. As per statement of accounts dated 04.04.2019 Complainant has paid about Rs. 32,68,273/- against the basic sale price of Rs. 29,99,994 lakhs till 20.04.2017. The grievance of the complainant is that despite payment of entire cost of the floor, respondent has failed to deliver him possession of the flat. Therefore, complainant is seeking handover of possession of the floor along with interest on account of delay in handing over of possession till the date of receipt of Occupation Certificate by the respondent.

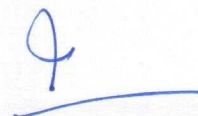
2. Respondent in response has informed the Authority that they had filed an application for grant of occupation certificate on 12.09.2016 but same was dismissed by Director, Town & Country Planning Department, Haryana vide order 30.05.2018. Further an appeal filed by respondent against said order was dismissed on 26.09.2019 account of non-prosecution.



3. After hearing both parties and perusal of records of the case, Authority observes that admittedly as per clause 28 of the FBA, respondent was obliged to give possession of the unit to the complainant within 30 months, which period lapsed in Aug, 2014. Respondent has failed to deliver possession of the floor till date. Moreover, respondent has admitted that even appeal filed against order dated 30.05.2018 vide which their application for grant of Occupation certificate dated 12.09.2016 was rejected, has been dismissed by the Principal Secretary, Director, Town & Country Planning Department Haryana. Therefore, the complainant is entitled to receive interest on account of delay caused in offering possession from deemed date of possession i.e. Aug, 2014 up to the date on which valid and lawful possession will be offered to him 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.

4. Since complainant has failed to attach receipts of amount paid by him till date, the amount reflected as paid by complainant vide statement of accounts dated 04.04.2019 annexed by respondent at Annexre-R-5 of their reply dated 23.09.2020 is taken into account for calculation of interest on account of delay. Therefore, Rs. 32,68,273/- is taken into account for



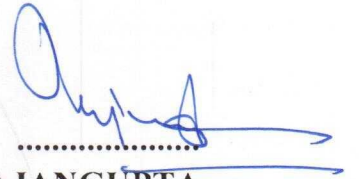
calculation of interest. This amount includes even the amount of Rs. 3,91,539/- towards EDC/IDC and Rs. 29,311/- for VAT. The amount of EDC/IDC and VAT is collected by the promoter for payment to the department/authorities entitled to receive it for carrying their statutory obligations. If a builder 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 28,47,423/- (Rs. 3268273/- – Rs. 391539/- – Rs. 29311/-).

5. Since complainant wishes to wait for delivery of possession till offer of possession after obtaining of 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. 19,30,607/-. The Authority orders that upfront payment of Rs. 19,30,607/- will be made to complainant on account of

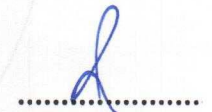


delay caused in offering possession within 90 days and further monthly interest @ Rs.22068/- will be paid to complainant by the respondent w.e.f. 07.12.2021 till the date a legally valid offer of possession is made.

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



RAJANGUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]