



Complaint No. 718 Of 2021

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 718 OF 2021

Surender Singh

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 03.02.2022

Hearing: 2nd

Present: -Mr. R. P. Dangi, Ld. counsel for the complainant through VC.

Mr. Shobit Phutela & Mr. Shubhnit Hans, Ld. counsels for the
respondent through VC.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. While initiating his pleadings learned counsel for the complainant submitted that on the last date of hearing i.e. 12.10.2021, facts as narrated by both the parties as well as the arguments advanced by them were recorded in order

dated 12.10.2021. Relevant part of order dated 12.10.2021 is reproduced as below:

“1. At the outset learned counsel for the complainant stated that complainant had booked his unit on 05.03.2012 in the project named ‘ESPANIA ROYALE FLOOR (KRF)’, of the respondent situated at Kamaspur, Sonapat. Floor No. RF-56/SF, measuring 1224 sq. ft. was allotted to him on 05.01.2013. Floor Buyer Agreement (hereinafter referred to as FBA) was executed between 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 on 17.09.2015. He has paid about Rs. 26,94,705/- till date against total sale consideration of Rs. 29,34,980/-.

Grouse of the complainant is that respondent has offered him fit out possession on 21.05.2021 along with demand of Rs. 10,50,045/-, after a delay of approximately five and a half years and that too without obtaining Occupation Certificate. He is further aggrieved on the ground that respondent vide aforesaid offer letter informed him about unilateral increase in super area from 1224 sq. ft. to 1456 sq. ft. i.e. by 232.56 sq. ft. which has put additional financial burden of Ra. 4,75,000/- on him. He states that such a huge increase in super area of floor is unreasonable and unjustified therefore, said demand may be quashed.

He is also aggrieved by the fact that the respondent has offered possession without obtaining Occupation Certificate, therefore, he is entitled to upfront interest on account of delay in handing over of possession along with monthly interest till the date of legally valid handover of possession i.e. till receipt of Occupation Certificate.

He has also impugned demands made by the respondent vide said offer letter against following categories: (a) External Development Charges (EDC) Rs. 66,326/- (b) Miscellaneous Expenses (ME) Rs. 11,800/- (c) Interest Free Maintenance Security (SEC) Rs. 20,000/- (d) Basic Sale Value (UTC) (charges demanded on the pretext of increase in apartment area from 1224 sq. ft. to 1456 sq. ft.) Rs.4,75,000/- (e) Club Membership Charges(CMC) Rs. 50,000/- demanded as club charges when there is no club is in existence (f) Value Added Tax (VAT) Rs. 16,790/- (g) calculation of interest on delayed payment at MCLR + 2% rate of interest instead of 18 % as charged by the respondent. He stated that these illegal charges deserve to be quashed.

2. Learned counsel for the complainant stated that he had filed an application dated 12.08.2021 for placing on record and seeking stay of cancellation letter dated 20.07.2021 (Annexure C-9) and Pre-Cancellation letter dated 30.06.2021(Annexure C-6) vide which allotment of his unit has been cancelled.

3. Learned counsel for the respondent had on previous hearing sought time to file reply to said application. He informed the Authority that same has been filed today.

4. After perusal of the record, Authority observes that the present complaint was registered online on 09.07.2021 and the same was listed for first hearing on 19.08.2021. Admittedly, respondent has offered him fit out possession on 21.05.2021 along with demand of Rs. 10,50,045/-, after a delay of approximately five and a half years. Till date possession of the unit has not been handed over to the complainant. Complainant has already paid more than 90 percent of total consideration i.e. paid Rs. 26,94,705/- against total sale consideration of Rs. 29,34,980/-.

Respondent in his reply has taken the plea that since complainant did not come forward to pay balance amount and take delivery of possession after issuance of offer of fit out possession on 21.05.2021, therefore, they were constrained to issue Pre Cancellation letter 30.06.2021. Later they also issued cancellation letter on 20.07.2021.

5. Admittedly, there is a huge delay on part of respondent to deliver possession of unit to the complainant. As highlighted in the previous paragraph, complainant has grievances against certain demands raised by respondent vide said offer letter, which he had challenged before the Authority by filing present complaint. Cancellation of allotment of unit by respondent on ground that complainant did not pay balance and come forward for take over possession of the unit after issuance of offer of fit out for possession letter dated 21.05.2021 is unjust and unreasonable. Issuance of said Pre-cancellation letter dated 30.06.2021 as well as Cancellation letter dated 20.07.2021 to the complainant, when decision on aforesaid demands impugned by the complainant is still pending before the Authority, is unjust, therefore, operation of said Cancellation letter dated 20.07.2021 (Annexure C-9) and Pre-Cancellation letter dated 30.06.2021 (Annexure C-6) is stayed.”

2. Today learned counsel for the complainant, in furtherance of his grievances stated that since respondent has offered possession of the unit to him without obtaining Occupation Certificate, therefore, he is entitled to upfront interest on account of delay in handing over of possession along with monthly interest till the date of legally valid handover of possession i.e. till receipt of Occupation Certificate. He also requested quashing of impugned demands made

by the respondent vide said offer letter against following categories: (a) External Development Charges (EDC) Rs. 66,326/- (b) Miscellaneous Expenses (ME) Rs. 11,800/- (c) Interest Free Maintenance Security (SEC) Rs. 20,000/- (d) Basic Sale Value (UTC) (charges demanded on the pretext of increase in apartment area from 1224 sq. ft. to 1456 sq. ft.) Rs.4,75,000/- (e) Club Membership Charges(CMC) Rs. 50,000/- demanded as club charges when there is no club is in existence (f) Value Added Tax (VAT) Rs. 16,790/- (g) calculation of interest on delayed payment at MCLR + 2% rate of interest instead of 18 % as charged by the respondent.

3. 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.

4. After hearing both parties and perusal of records of the case, Authority observes that since offer for fit out possession dated 21.05.2021 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 26,94,705/- which includes the amount of Rs.4,15,411/- towards EDC/IDC and Rs. 16,790/- 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 22,62,504/- (Rs 26,94,705/- – Rs.4,15,411/- – Rs 16,790/-).



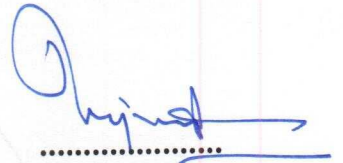
Since complainant wishes to wait for delivery of possession till offer of possession after obtaining Occupation Certificate by the respondent, therefore, he shall be entitled to a further amount of delay interest till a legally valid possession is offered after obtaining Occupation Certificate from department 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. 12,49,992/- .The Authority orders that upfront payment of Rs. 12,49,992/- will be made to complainant on account of delay caused in offering possession within 90 days and further monthly interest @ Rs. 17534/- will be paid to complainant by the respondent w.e.f. 03.02.2022 till the date a legally valid offer of possession is made.

5. With regard to request made by complainant regarding quashing of impugned demands made by the respondent vide said offer letter (namely following categories: (a) External Development Charges (EDC) Rs. 66,326/- (b) Miscellaneous Expenses (ME) Rs. 11,800/- (c) Interest Free Maintenance Security (SEC) Rs. 20,000/- (d) Basic Sale Value (UTC) (charges demanded on the pretext of increase in apartment area from 1224 sq. ft. to 1456 sq. ft.) Rs.4,75,000/- (e) Club Membership Charges(CMC) Rs. 50,000/- demanded as club charges when there is no club is in existence (f) Value Added Tax (VAT) Rs. 16,790/- (g) calculation of interest on delayed payment at MCLR + 2% rate

of interest instead of 18 % as charged by the respondent), Authority observes that since the offer for fit out possession dated 21.05.2021 is sans Occupation Certificate, therefore, it could not be termed a proper and legal offer of possession. Since respondent has failed to obtain Occupation Certificate till date, so aforesaid offer sans Occupation Certificate is illegal, thus, resultantly, demands made by respondent vide said offer letter are also rendered void. Respondent is directed to make a legal offer after obtaining Occupation Certificate. Said offer letter shall be accompanied with statement of accounts showing payables and receivables at that time. Authority has also decided and passed various judgments pertaining to issues regarding External Development Charges(EDC), Miscellaneous Expenses (ME), Interest Free Maintenance Security (SEC), increase in super area of the apartment, Club Membership Charges(CMC), Value Added Tax (VAT) and interest on delayed payments. Respondent while issuing such statement shall follow the principles laid down by the Authority in Complaint No. 607 of 2018 titled Vivek Kadyan Versus M/s TDI Infrastructure Pvt. Ltd., Complaint No. Parmeet Singh vs M/s TDI Infrastructure Pvt. Ltd. and Complaint No. 83 of 2019 titled Adesh Vats Versus M/s TDI Infrastructure Pvt. Ltd. Thus, respondent is directed to and charge complainant for External Development Charges(EDC), Miscellaneous Expenses (ME), Interest Free Maintenance Security (SEC), increase in super area of the apartment, Club Membership Charges(CMC), Value Added Tax (VAT) and interest on delayed payments, strictly as per principles laid down in aforesaid

complaints. In case respondent fails to follow aforesaid principles formulated by the Authority on all aforesaid issues, 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.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]