



Complaint No. 700 Of 2021

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 700 OF 2021

Megha Sharma

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited.

....RESPONDENT(S)

**CORAM: Rajan Gupta**

**Chairman**

**Dilbag Singh Sihag**

**Member**

**Date of Hearing: 03.02.2022**

**Hearing: 3<sup>rd</sup>**

**Present: -** Mr. Sudeep Singh Gehlawat, Ld. Counsel for the complainant.  
Mr. Shobit Phutela & Mr. Shubhnit Hans, Ld. counsels for the  
respondent through VC.

### **ORDER (DILBAG SINGH SIHAG-MEMBER)**

1. At the outset, learned counsel for the complainant stated that complainant had booked his unit on 06.05.2010 in the project named 'TUSCAN

FLOORS', of the respondent situated at Kundli, Sonepat. Floor No. T-55/GF, measuring 1164 sq. ft. was allotted to her. Floor Buyer Agreement (hereinafter referred to as FBA) was executed between parties on 14.03.2011. 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 on 14.08.2013. Complainant has paid about Rs. 28,42,813/- till date against total sale consideration of Rs. 30,36,926/-.

Grouse of the complainant is that despite lapse of more than eight years from the deemed date of delivery, respondent has failed to deliver possession of aforesaid floor to her till date. Therefore, she is seeking 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.

2. Learned counsel for the respondent while admitting the payment made by the complainant stated that respondent had applied for grant of Occupation Certificate on 09.05.2014 but same has not been granted to them by Department of Town & Country Planning. Thus, due to non-receipt of Occupation Certificate, presently they are unable to offer unit to the complainant.

3. After hearing both parties and perusal of records of the case, Authority observes that application dated 09.05.2014 was filed by the respondent promoter for issuance of Occupation Certificate, aforesaid application might have been defective due to which Department of Town & Country Planning has not

granted Occupation Certificate till date. In these circumstances, it is inferred that a proper and lawful offer of possession could not be made till respondent receives Occupation Certificate from the concerned department. 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 actual valid delivery of possession of booked apartment is made to the complainant after obtaining Occupation Certificate from the competent Authority.

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 28,42,813/- which includes the amount of Rs.2,86,926/- towards EDC/IDC and Rs. 14,563/- for VAT. The amount of EDC/IDC and VAT were collected by the promoter for onward 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. Delay interest accordingly deserves to be

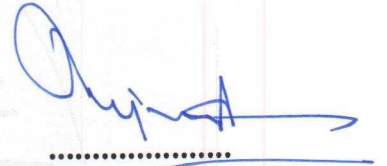
calculated only on amount of Rs 25,41,324/- (Rs 28,42,813/- – Rs. 2,86,926/- – Rs 14,563/-).

Since complainant wishes to wait for delivery of possession till offer of possession after obtaining Occupation Certificate by the respondent, therefore, she shall be entitled to a further amount of delay interest till a legally valid possession will be offered after obtaining Occupation Certificate from department concerned. As per calculations made by Accounts Branch, amount payable by the 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. 17,13,963/- .The Authority orders that upfront payment of Rs.17,13,963/- will be made to complainant on account of delay caused in offering possession within 90 days and further monthly interest @ Rs. 19695/- 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. Respondent is further 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. 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 strictly as per principles laid down in aforesaid complaints. In case, respondent fails to follow aforesaid principles formulated by the Authority, 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]**