



Complaint No. 1448 Of 2020

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1448 OF 2020

Naveen Gupta

....COMPLAINANT(S)

VERSUS

TDI Infracorp (India) Limited

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 28.04.2022

Hearing: 7th

Present: -Mr. Savinder Singh Gill , Ld. counsel for the complainant through VC.

Mr. Ajay Ghanghas, Ld. Counsel for respondent no.1 through VC.

Mr. Kunal Jain, Ld. Counsel for respondent no.1.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. While initiating his pleadings learned counsel for the complainant sought attention of the Authority to its order dated 06.10.2021. Vide said order

Authority was pleased to record detailed findings of the case, same are reproduced as follows:

“1. On 05.08.2021, learned counsel for respondent has informed the Authority that respondent company has sent offer for fit out possession to the complainant. He had also sought some time to ascertain whether respondent company has obtained Occupation Certificate or not. Till date respondent has failed to comply with order dated 05.08.2021.

2. Complainant herein has booked a floor on 12.04.2013 in a project named “Water Side Floors in Lake City Grove” situated in Kundli, Sonapat. Said project was launched by respondent and residential duplex built-up floor no. WF-140 measuring 1400 sq was booked in favour of complainant vide registration form. Basic sale Price was fixed at Rs. 59,00,000/- and complainant has already paid a sum of Rs. 59,19,464/- till July,2017. No allotment was done by respondent in favour of the complainant. No builder buyer agreement was executed between the parties. Respondent in similar cases had assured complainants to deliver units within thirty months from the date of booking. Thus, even in the present case since no agreement has been executed by the respondent, therefore, the deemed date of delivery of unit should be taken as thirty months from the date of booking, meaning thereby that complaint’s unit should have been delivered to him by October, 2015. Complainant is aggrieved on the ground that even after lapse of about eight and a half years from the date of booking, respondent has failed to deliver possession of unit to the complainant. Therefore, the complainant is seeking possession along with interest on account of delay in offer of possession till actual delivery of possession.

3. Although, as per statement of respondent’s counsel, fit out possession was offered to the complainant but said offer has not been placed on record. Respondent has even failed to disclose the status of Occupation Certificate as directed vide order dated 05.08.2021.

Admittedly, respondent has failed to issue allotment letter and even failed to execute builder buyer agreement with the complainant till date. So, period of thirty months from the date of booking, as was prescribed in similar other cases of the same project, can be taken as reasonable time by which unit should have been delivered to the complainant. Thus, deemed date of delivery of the unit comes to October, 2015 and a delay of about six years has been already caused in delivery of possession. Respondent has also failed to furnish documents showing status of Occupation Certificate of the project. Respondent in his reply has admitted that it would take another three months to complete the unit of complainant. In such circumstances, Authority tentatively holds

respondent prima facie liable to pay upfront interest for delay in delivery of possession to the complainant as per Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 and also to pay monthly interest to the complainant from date of order till the date a valid handover of the unit is offered after receipt of Occupation Certificate.

4. Complainant is directed to file his calculations interest regarding upfront delay interest and monthly interest with an advance copy to the respondent. Since, Mr. Varun Singh Dhanda, Proxy counsel for the respondent has appeared and has sought adjournment on account of non-availability of arguing counsel, case is adjourned to 01.12.2021 for arguments which the respondent intends to address against the prima facie opinion expressed in this order about award of upfront and monthly interest.”

2. Today when Authority asked learned counsel for the respondent about present status of Occupation Certificate of the project, he stated that he has not received any information from the respondent company qua the same. Respondent has also failed to place on record alleged fit out possession offered to the complainant as stated by learned counsel for respondent on last date of hearing. Thus, respondent has failed to comply with directions given to him vide order dated 06.10.2021.

3. In furtherance of order dated 06.10.2021, Authority observes that admittedly, respondent has failed to issue allotment letter as well as execute builder buyer agreement with the complainant till date. Despite lapse of approximately nine years from date of booking, respondent has failed to handover possession of the unit to the complainant till date. He has also failed to place on record documents showing present status of Occupation Certificate of the project and alleged ‘fit out offer of possession’ till date. Since there is no information

regarding present status of Occupation Certificate, Authority concludes that alleged offer for fit out possession is sans Occupation Certificate, therefore, it could not be termed a proper and legal offer of possession. Thus, a proper and lawful offer of possession is yet to be made. The Authority further observes that respondent is liable to pay upfront interest for delay in delivery of possession to the complainant as per Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 in addition to pay monthly interest to the complainant from date of order till the date a valid handover of the unit is offered after receipt of Occupation Certificate from the concerned Authority.

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 flat 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.

4. Since, complainant has paid total amount of Rs 59,19,464/- which includes the amount of Rs. 3,99,280/- towards EDC/IDC and Rs. 32,740/- for VAT. The amount of EDC/IDC is collected by the promoter for payment to the department/authorities concerned for carrying out 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. Builder therefore is not liable to pay delay interest to the allottee on the amounts collected for passing over to state govt. department/authorities concerned. The delay interest accordingly deserves to be calculated only on amount of Rs. 54,87,444/- (Rs 59,19,464/- – Rs. 3,99,280/- – Rs 32,740/-).

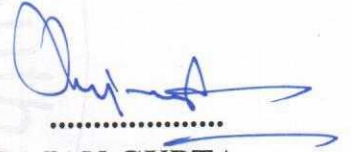
Since complainant wish to wait for delivery of possession of flat till respondent offers possession after obtaining Occupation Certificate, therefore, he shall be entitled to a further amount of delay interest till a legally valid possession will be offered after obtaining Occupation Certificate from 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. 33,01,055/- .The Authority orders that upfront payment of Rs.33,01,055/- will be made to complainant on account of delay caused in offering possession within 90 days and further monthly interest @ Rs. 42,985/- will be paid to complainants by the respondent w.e.f. 28.04.2022 till the date a legally valid offer of possession is made.

5. Authority further observes that since alleged offer for fit out possession is sans Occupation Certificate, therefore, it could not be termed a



proper and legal offer of possession. Therefore, aforesaid offer sans Occupation Certificate is illegal and void. So, respondent is directed to make a fresh legal offer after obtaining Occupation Certificate. Said offer letter shall be accompanied with statement of accounts showing lawful payables and receivables along with justification. Respondent while issuing such statement shall follow the principles laid down by the Authority.

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]