



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1338 OF 2020

Kamla Arora & Anr.

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Limited.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 27.04.2022

Hearing: 6th

Present: - Ms. Navneet, Ld. counsel for complainants through VC.

Mr Shubhnit Hans, Ld. Counsel for respondent through VC.

ORDER (DILBAG SINGH SIHAG-MEMBER)

1. At the outset, learned counsel for the complainants stated that complainants had booked their unit on 06.07.2011 in the project named 'Espania Floors' of the respondent situated at Sonapat. Floor No. EF-24FF, measuring 1224 sq. ft. was allotted to them on 19.01.2012. Floor Buyer Agreement

(hereinafter referred to as FBA) was executed between parties on 06.02.2012. 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 06.08.2014. Complainants have paid Rs. 26,86,048/- till date against total sale consideration of Rs. 26,19,709/-.

Main prayer of the complainants is that respondent had offered them fit out possession on 25.08.2020 along with a demand of Rs. 4,63,939/-, after a delay of about six years and that too without obtaining Occupation Certificate. Therefore, complainants have sought 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. after receipt of Occupation Certificate.

They are further aggrieved on the ground that respondent vide aforesaid offer letter informed them about unilateral increase in super area from 1224 sq. ft. to 1398 sq. ft. i.e. by 174 sq. fts. which has put additional financial burden on them. Ld. counsel for the complainants stated that such a huge increase in super area of floor is unreasonable and unjustified therefore, said demand may be quashed.

They have also impugned demands made by the respondent vide said offer letter against following components: (a) External Development Charges (EDC) Rs. 3,65,157/- (b) Miscellaneous Expenses (ME) Rs. 11,800/- (c) Club Membership Charges(CMC) Rs. 50,000/- when there is no club is in existence. Complainants have requested that these illegal charges deserve to be quashed.



2. In response, learned counsel for the respondent has apprised the Authority that they had filed an application for grant of occupation certificate on 12.09.2016 but the same was dismissed by Director, Town & Country Planning Department, Haryana vide order 30.05.2018. Further an appeal was filed by the respondent against said order but the same was dismissed on 26.09.2019 on account of non-prosecution. Presently, a fresh application for grant of Occupation Certificate has been filed before Town & Country Planning Department, Haryana. He stated that due to non-receipt of Occupation Certificate, presently they are unable to deliver unit to the complainants.

3. After hearing both parties and perusal of records of the case, Authority observes that since offer for fit out possession dated 25.08.2020 is sans Occupation Certificate, therefore, it could not be termed a proper and legal offer of possession. On account of rejection of their application firstly by Director, Town & Country Planning Department and thereafter by Principal Secretary, Town & Country Planning Department Haryana, such conclusion becomes all the more irresistible.

In view of above findings, it is established 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 actual valid delivery of possession of booked flat is made to the complainants that too 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, complainants have paid total amount of Rs 26,86,048/- which includes the amount of Rs. 3,19,709/- towards EDC/IDC. 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. 23,66,339/- (Rs 26,86,048/- – Rs. 3,19,709/-).

Since complainants wish to wait for delivery of possession till offer of possession after obtaining Occupation Certificate by the respondent, therefore, they shall be entitled to a further amount of delay interest till a legally valid possession will be offered after obtaining Occupation Certificate from the department concerned. As per calculations made by Accounts Branch, amount payable by the respondent to the complainants 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. 17,05,845/- .The Authority orders that upfront payment of Rs.17,05,845/- will be made to complainants on account of delay caused in offering possession within 90 days and further monthly interest @ Rs. 18,536/- will be paid to complainants by the respondent w.e.f. 27.04.2022 till the date a legally valid offer of possession is made.

5. As far as issue of quashing of impugned demands made by the respondent vide said offer letter under various heads i.e. (a) External Development Charges (EDC) Rs. 3,65,157/- (b) Miscellaneous Expenses (ME) Rs. 11,800/- (c) Club Membership Charges(CMC) Rs. 50,000/- (d) Charges demanded on the pretext of increase in apartment area from 1224 sq. ft. to 1398 sq. ft., Authority observes that since the offer for fit out possession dated 25.08.2020 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 resultantly, aforesaid demands made by respondent vide offer letter dated 25.08.2020 are also rendered void.

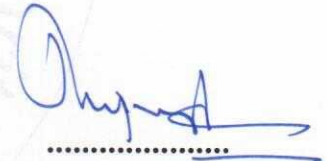
Respondent is directed to make a legal offer after obtaining Occupation Certificate. Said offer letter shall be accompanied with statement of accounts showing lawful payables and receivables along with justification at that time.

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. Respondent is directed to charge complainants for External Development Charges(EDC), Miscellaneous Expenses (ME), increase in super area of the apartment and Club Membership Charges(CMC) strictly as per principles laid down in aforesaid complaint. In case, respondent fails to follow aforesaid principles formulated by the Authority on all aforesaid issues, complainants 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.



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH SIHAG
[MEMBER]