



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO.123 OF 2019

Subodh Bansal

....COMPLAINANT/S

VERSUS

TDI Infrastructure

....RESPONDENT

2. COMPLAINT NO. 124 OF 2019

Neena Bansal

....COMPLAINANT/S

VERSUS

TDI Infrastructure

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 17.05.2022

Hearing: 8th

Present: - Mr. Vikas Deep, Ld. counsel for the complainant through VC.

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

Mr. Ishwar Singh, Ld. Counsel for the complainant.

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ORDER (RAJAN GUPTA-CHAIRMAN)

1. Both captioned complaints are being disposed of through this common order on the ground that core issue involved in all cases are identical. Moreover, all these cases pertain to the same project of the respondent i.e. 'ESPANIA ROYALE HEIGHTS' at Sonipat. This order is being passed in view of the facts of lead **Complaint case no. 123 of 2019 Subodh Bansal vs TDI Infrastructure.**

2. On the last date of hearing, after perusal of record and hearing both the parties, Authority had passed a detailed order dated 24.03.2022. Vide said order Authority directed respondent to file letter of offer for fit out possession dated 19.03.2020 in both cases. Learned counsel for the complainants had also sought time to file order of withdrawal from State Consumer Disputes Redressal Commission, Panchkula in both cases.

Learned counsel for respondent has filed letter for fit out offer dated 19.03.2020 in both cases today. Learned counsel for the complainants has also sent orders dated 15.01.2019 passed by Hon'ble State Consumer Disputes Redressal Commission, Panchkula (herein after referred to as SCDRC, PKL) via email today. Complainants have withdrawn complaints from SCDRC, PKL with liberty to pursue both the present cases before Authority. For ready reference, relevant part of aforementioned order dated 24.03.2022 is reproduced as follows:



“5. Case of the complainant is that he had booked flat in the project named ‘ESPANIA ROYALE HEIGHTS’ of the respondent situated at Sonipat on 22.04.2012. Unit No. B-2/1001, measuring 1075 sq. fts. was allotted to him. Builder Buyer Agreement (hereinafter referred to as BBA) was executed between parties on 09.04.2013. As per BBA, delivery of unit was to be made within 30 months from the date of agreement, thus deemed date of delivery was in Oct, 2015. Complainant has paid Rs. 20,18,241/- against sale consideration of Rs. 22,30,840/-.

Main grouse of the complainant is that despite payment of Rs. 20,18,241/- till Jan, 2017 which is approximately ninety percent of total sale consideration, respondent sent Pre cancellation letter dated 20.04.2017 on account of non-payment of additional demand of Rs. 6,57,955/- which is not only unreasonable but also illegal. Therefore, he requested for quashing of aforesaid Pre-cancellation letter.

Learned counsel for the complainants stated that respondent has failed to perform his contractual obligation to deliver possession of the flats to complainants even after lapse of about seven years after the deemed date of delivery. Therefore, complainants have sought refund of the amount already paid to respondent along with interest as per Rule 15 of the HRERA, Rules 2017 in both cases.

Learned counsel for the complainants has submitted that complainants in both cases have although sought refund of already paid amount along with permissible interest as per Rule 15 of the HRERA, Rules 2017 but in alternate they are also willing to accept possession of flats after receipt of Occupation Certificate along with permissible interest on account of delay in offer of possession till actual delivery of possession to complainants.

6. Learned counsel for the complainants further apprised Authority that complainants have already filed consumer complaints before Hon’ble State Consumer Disputes Redressal Commission, Panchkula in both cases. He sought some time to withdraw same from there.

7. On the other hand, learned counsel for the respondent submitted that although construction of both flats is complete and ready for handover of delivery. Respondent has even offered fit out possession in both cases to the complainants but delivery of possession of flats could not be made due to pendency of an application for grant of Occupation certificate with the Director, Town & Country Planning department since 31.03.2017. Once occupation certificate is granted possession of the flats will be handed over to the complainants. He sought time to place on record aforesaid letter of offer for fit out possession in both cases.

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8. On request of counsels for both parties, cases are adjourned to 17.05.2022 for filing of order of withdrawal from State Consumer Disputes Redressal Commission, Panchkula in both cases. Respondent shall also file aforesaid offer letters in both cases. Parties shall file aforesaid documents and supply copy of same to each other at least two weeks before next date of hearing.”

3. Learned counsel for the complainants stated that complainants are willing to take possession of their units after receipt of Occupation Certificate by the respondent subject to payment of upfront interest on account of delay in delivery of possession.

4. After hearing both parties and perusal of records of the case, Authority observes that since offer for fit out possession dated 19.03.2020 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 may have been 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. As per statement of learned counsel for complainants, complainants are willing to take possession of their units after receipt of Occupation Certificate. 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.

In these circumstances, it is concluded that a proper and lawful offer of possession is yet to be made by the respondent. 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 floors is made to the complainants after obtaining Occupation Certificate.

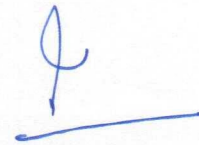
Further as per provisions of section 18 of The RERA Act, 2016, the accrued interest up to the date of passing this order shall be paid upfront within 90 days in both cases. Said amounts will be worked out as per Rule 15 of the HRERA Rules, 2017.

5. Complaint No. 123-2019, complainant has paid total amount of Rs. 20,18,241/- which includes the amount of Rs. 3,06,590/- towards EDC. The amounts of EDC are 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 17,11,651/- (Rs. 20,18,241/- – Rs. 3,06,590/-).

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. 10,27,127/- . The Authority orders that upfront payment of Rs.10,27,127/- will be made to complainant on account of delay caused in offering possession within 90 days and further monthly interest @ Rs. 13,407/- will be paid to complainant by the respondent w.e.f. 18.05.2022 till the date a legally valid offer of possession is made.

6. Complaint No. 124-2019, complainant has paid total amount of Rs 20,16,512/- which includes the amount of Rs. 3,06,590/- towards EDC. The amount of EDC 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



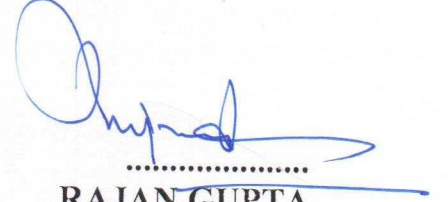
be calculated only on amount of Rs 17,09,922/- (Rs 20,16,512/- – Rs. 3,06,590/-).

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. 10,25,741/- . The Authority orders that upfront payment of Rs. 10,25,741/- will be made to complainant on account of delay caused in offering possession within 90 days and further monthly interest @ Rs. 13,394/- will be paid to complainant by the respondent w.e.f. 18.05.2022 till the date a legally valid offer of possession is made.

7. Respondent is directed to make a legal offer of possession of units to complainants after obtaining Occupation Certificate. Said offer letter shall be accompanied with statement of accounts showing lawful payables and receivables as provisions of RERA Act, 2016 and principles laid down by the Authority. 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 from the date of order till a legally valid possession will be offered after obtaining Occupation Certificate from department concerned. Said further interest shall be adjusted in statement of accounts issued by respondent at time of delivery of possession of floors along with Occupation Certificate. Both complaints are



disposed off in these terms. Files 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]

