# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## COMPLAINT NO. 421 OF 2022

Gulshan Kumar Narang ....COMPLAINANT

VERSUS

TDI Infracorp (India) Ltd. ....RESPONDENT

**CORAM:** **Rajan Gupta** **Chairman**

**Dilbag Singh Sihag** **Member**

**Date of Hearing:** 10.08.2022

**Hearing:** 2nd

**Present: -** Mr. Madhur Panwar, Ld. Counsel for complainant through VC.

Mr. Ajay Ghanghas, Ld. Proxy Counsel for respondent through VC.

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

1. Learned counsel for the complainant has stated facts of the case that case of the complainant is that original allottees booked a flat bearing no.

T-14/0302 having area of 1000 sq. fts. in the project of respondent namely "Lake Drive Apartment" in TDI Lake Grove City, Sonepat by depositing initial amount of Rs. 2,50,000/- on 17.09.2014. Complainant purchased rights qua flat from original allottees on 21.09.2019. Builder Buyer Agreement ( herein after referred to as BBA) was executed between parties on 21.09.2019. No deemed date of delivery has been mentioned in the BBA but respondent had promised to deliver flat to the complainant by 28.09.2019. Complainant has paid Rs. 41,19,539/- till date against total sale consideration of Rs. 45,35,079/.

Main grouse of the complainant is that respondent has offered him fit out possession on 29.12.2021 along with a demand of Rs. 13,34,370/-, after a delay of about two years from the deemed date of delivery and that too without obtaining Occupation Certificate. Therefore, complainant has sought upfront interest on account of delay in handing over of possession apart from monthly interest till the date of legally valid handover of possession i.e. after receipt of Occupation Certificate.

He has also impugned demands made by the respondent vide said offer letter against following components:

i) Interest Free Maintenance Charges Rs. 52,560/-

ii) Miscellaneous Expenses (ME) Rs. 11,800/-

iii) External Development Charges (EDC) Rs. 29,602/-

iv) Goods & Service Tax (GST)

v) Electrical and Fire Fighting Charges (EEFC) 25,233/-

vi) Unilateral Increase in area from 1000 sq. fts. to 1095 sq. fts. Rs. 8,10,312/-

vii) Club Membership Charges (CMC) Rs. 88,500/-

viii) Open Car parking Rs. 1,75,000/-

ix) Late Payment Fee Rs. 1,41,373/-

Complainant has requested that these illegal charges be quashed.

2. Learned counsel for the respondents stated that respondent has applied for grant of Occupation Certificate for the project. Further, respondents had offered fit out possession to the complainant on 29.12.2021 but the complainant has not been coming forward to take possession of the flat. Learned counsel for respondent has also denied that the deemed date of delivery of the flat was 26.08.2019. Learned counsel for respondent has sought time to present his arguments.

3. After hearing both parties and perusal of records of the case, Authority observes that Complainant has paid Rs. 41,19,539/- till date against total sale consideration of Rs. 45,35,079/. Respondent has made an offer for fit out possession dated 29.12.2021. No documents have been placed on record by respondent to show present status of Occupation Certificate of the project. Since there is no information regarding status of receipt of Occupation

Certificate, Authority is of the view that said offer of fit out possession dated 29.12.2021 is not legal since it is without Occupation Certificate. In such circumstances Authority concludes that a proper and lawful handing over of possession is yet to take place. Therefore, proper possession is yet to be offered by respondent. Therefore, Authority, prima facie, observes that respondent is liable to pay upfront interest to the complainant as per Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, from the deemed date of offering possession up to lawful offer of possession after receipt of Occupation Certificate from the department concerned.

Further, no deemed date of delivery has been mentioned in the BBA. As per complainant's version respondent had promised to deliver possession of flat to him on 26.08.2019 which was after one week of execution of the BBA. Respondent has categorically denied in his reply that 26.08.2019 was not the deemed date of delivery. In such circumstances, when the BBA does not mentions deemed date of delivery, Authority observes that deemed date of delivery of flat will be taken as three years from the date of making substantial payments which was 26.12.2014 when complainant had paid approximately 50% of total sale consideration. Meaning thereby that complainant's flat should have been delivered to him by 26.12.2017. Thus, the deemed date for purpose of calculation of interest for delay in delivery of possession of plot is being taken as 26.12.2017.

Authority further observes as follows:

i) **Interest Free Maintenance Security (IFMS)**:

The Authority vide order dated 01.04.2021 in Complaint No. 464 of 2019 titled Kanwar Singh vs Mudra Finance Ltd. has laid down certain principles in regard to IFMS, according to which IFMS is a non-refundable interest free security contributed by the allottees for carrying out capital works in future. Thus, extra money collected on account of IFMS has to be handed over by promoter to Association of allottees. IFMS is over and above the basic sale consideration and it cannot be utilized by the promoter.

Thus, IFMS money is payable by allottees but in the present case Final statement of account dated 29.12.2021 reflects that complainant has already paid Rs. 52,560/- but it seems that it has again shown payable by mistake. Therefore, no amount on account of IFMS remains to be paid by the complainant. Therefore, Rs. 52,560/- shown as balance on account of "Interest Free Maintenance Security" is quashed.

ii. **Miscellaneous Expenses (ME):**

The respondent informed that this amount has been charged on account of the fee payable to the advocate for carrying out registration formalities etc. It is ordered that in case complainant do not wish to engage any advocate to carry out registration formalities, the demand made by the respondent towards "Stamp Duty/Miscellaneous charges" shall be withdrawn.

iii. **External development Charges ( EDC):**

Learned counsel for the complainant has stated that complainant has already paid Rs. 3,11,600/-on account of EDC as reflected in Annexure C-3. Therefore, additional demand of Rs. 29,602/- as External Development charges vide offer letter dated 29.12.2021 is illegal and unjustified.

On perusal of Annexure C-3, Authority observes that respondent has already charged Rs. 3,11,600/- towards total sale consideration Rs. 45,35,079/-. In such scenario, respondent is directed to give justification for additional demand of Rs. 29,602/- on next date of hearing by way of filing affidavit with an advance copy to the complainant.

iv. **Goods and Service Tax (GST)** :-

Another grievance of complainant is that respondent is charging Goods and Service Tax (GST). The GST is payable on the date of execution of the conveyance deed, therefore, the respondent will be entitled to charge GST at the rate which will be applicable on the date the conveyance deed is executed and registered in favour of the complainant.

v. **Electrical and Fire Fighting Charges (EFFC)**:

Learned counsel for the complainant has stated that complainant has already paid Rs. 2,65,500/-on account of EFFC as reflected in Annexure C-3. Therefore, additional demand of Rs. 25,223/- as EFFC vide offer letter dated 29.12.2021 is illegal and unjustified.

On perusal of Annexure C-3, Authority observes that respondent has already charged Rs. 2,65,500/- towards total sale consideration Rs. 45,35,079/-. In such scenario, respondent is directed to give justification for additional demand of Rs. 25,223/- on next date of hearing by way of filing affidavit with an advance copy to the complainant.

vi. **Increase in area**:

Learned counsel for the complainant has stated that super area taken into account by respondent while preparing the statement of account dated 29.12.2021 was 1095 sq. fts. instead of 1000 sq. fts as per booking/ allotment. Thus, respondent vide said offer letter has increased the super area unilaterally from 1000 sq. fts. to 1095 sq. fts. which has put an additional financial burden of Rs.8,10,312/-on complainant. In view of above, Authority directs respondent to file Component wise super area chart as per original sanctioned building plans and revised plan if any with an advance copy to the complainant in form of affidavit at least fifteen days before next date of hearing.

vii. **Club Charges (CMC):**

The respondent has raised a demand of Rs. 88,500/- on account of Club Membership charges. Authority decides that the club membership charges shall be payable by the complainant only if the club has been constructed, irrespective of the fact that it is functional or not. Both parties are directed to place photographs on record in support of their arguments with advance copy to each other before next date of hearing.

viii. **Car Parking Charges (VPK):**

Another grievance of the complainant is that the charges levied for open car parking space are unreasonable. Space meant for open parking provided in any real estate project is undoubtedly part of common areas and any part of common area whether a space for open parking or any other area meant for other activities cannot be sold by any of the promoter even if there is any provision in any of the bilateral agreement executed between promoter and allottee. Hon'ble Apex Court vide its judgment in Nahalchand Laloochand Pvt. Ltd. V Panchali Co-op, Housing Society Ltd. (2010, 9 SCC, 536) has held that developer cannot in law realize any amount from the purchasers towards open/stilt car parking. The promoter has no right to sell any portion of such building which is not `flat'. Thus, respondent can only charge for covered car parking space. In view of above, amount charged from complainant for open car paking deserves to be quashed.

ix. **Late Payment Charges**:

The complainant is also aggrieved on account of demand of Rs. 1,41,373/- as interest on delay in making payment of due instalments. Admittedly, Complainant has paid

Rs. 41,19,539/- till date against total sale consideration of Rs. 45,35,079/ but till date flat has not been handed over to complainant. Even, no documents have been placed on record by respondent to show present status of Occupation Certificate of the project. Therefore, Authority has held that offer of fit out possession letter dated 29.12.2021 is not legal since it is without Occupation Certificate. In such circumstances Authority concludes that a proper and lawful handing over of possession is yet to take place. Therefore, Authority will consider that proper possession is yet to be offered, and, respondent is liable to pay upfront interest to the complainant as per Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, from the deemed date of offering possession up to lawful offer of possession after receipt of Occupation Certificate from the department concerned. Thus, when respondent is himself at fault and liable to pay interest for delay in handing over possession of flat, he cannot be allowed to charge late payment charges form complainant. Thus, said late payment charges appear prima facie to be unjustified. Respondent is granted opportunity to justify levy of said late payment charges.

4. With these observations, case is adjourned to **27.09.2022** on request of learned counsel for respondent. Both parties shall file information/documents as mentioned above with an advance copy to each other at least two weeks before next date of hearing. Respondent shall pay outstanding cost of Rs.5,000/- and Rs. 2,000/- to the Authority and complainant respectively on next date of hearing.



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**RAJAN GUPTA**
**[CHAIRMAN]**

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**DILBAG SINGH SIHAG**
**[MEMBER]**