



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1.COMPLAINT NO. 133 OF 2022

Mrs. Selvi K M

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT(S)

2. COMPLAINT NO. 135 OF 2022

Jai Parkash

....COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

3. COMPLAINT NO. 136 OF 2022

Hari Pant

....COMPLAINANT(S)

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT(S)

4.COMPLAINT NO. 138 OF 2022

Nirmala Devi

....COMPLAINANT

VERSUS

TDI Infrastructure Ltd.

....RESPONDENT

5. COMPLAINT NO. 183 OF 2022

Naresh AryaCOMPLAINANT

VERSUS

TDI Infrastructure Ltd.RESPONDENT

6. COMPLAINT NO. 478 OF 2022

Sanjay GoelCOMPLAINANT

VERSUS

TDI Infrastructure Ltd.RESPONDENT

7. COMPLAINT NO. 563 OF 2022

Kanwaljeet SinghCOMPLAINANT

VERSUS

TDI InfrastructureRESPONDENT

8. COMPLAINT NO. 564 OF 2022

Vivek Pal SinghCOMPLAINANT

VERSUS

TDI InfrastructureRESPONDENT

9. COMPLAINT NO. 613 OF 2022

Evneet KaurCOMPLAINANT

VERSUS

TDI Infrastructure Ltd.RESPONDENT



CORAM: **Dr. Geeta Rathee Singh** **Member**
 Nadim Akhtar **Member**

Date of Hearing: 20.04.2023

Hearing: 7th (in complaint no. 133, 135, 136, 138, 183
 563 & 564 of 2022)
 6th (in complaint no. 478 & 613 of 2022)

Present through : - Mr. Sushil Kumar, Counsel for complainant
(in complaint no 133, 136 & 613 of 2022).
 Mr. Shiv Kumar, Counsel for complainant .
(in complaint no.135 & 138 of 2022)
 Mr. Arjun Kundra, Counsel for complainant
(in complaint no. 183 of 2022)
 Mr. Arun Goyal , Counsel for complainant
(in complaint no. 478 of 2022)
 None for complainant
(in complaint no. 563 & 564 of 2022)
 None for respondent.

ORDER (NADIM AKHTAR - MEMBER)

1. Captioned complaints have been taken up together as a bunch matter as they pertain to the same project of the respondent and facts and grievances involved are similar in nature.. Taking complaint no. 133 of 2022 titled "Mrs. Selvi K M vs TDI Infrastructure Ltd" as a lead case facts averred therein are that complainant had made a payment of ₹ 3,00,000/- as advance against a residential flat measuring 1390 sq. ft.. in a present and future project of the respondent namely 'Tuscan Heights, TDI City' situated at village Kundli, Sonapat on 19.04.2011. Complainant was allotted Flat no. T-5/0904 having an



area of 1390 sq.ft vide allotment letter dated 29.08.2011. The total sale consideration of said flat was fixed at ₹ 27,45,250/-. Copy of booking receipt along with allotment is annexed as Annexure C-1 and C-2. Apartment buyer agreement was executed on 28.09.2011 against total base price of ₹27,45,250/-. As per para no.30 of agreement, possession of the flat was to be handed over to the complainant within 30 months i.e. by 28.03.2014. On 08.12.2017, respondent offered fit out possession directing the complainant to take possession by 07.01.2018 upon payment of balance sale consideration. Copy of offer of fit out possession is annexed as Annexure C-4. Respondent also issued a statement of account along with said offer of possession revealing that the area of the flat has been increased from 1390 sq.ft to 1654 sq.ft. without providing any proof or justification -.Copy of statement of account annexed is as Annexure C-5. After paying the entire amount complainant was given NOC for handing over of possession of unit and thereafter possession certificate was issued on 28.01.2018 annexed as Annexure C-6. It is alleged by the complainant that respondent has illegally raised demand on ground of increased area, EEFC i.e. ₹ 4,21,525/-, club membership i.e ₹50,000, PLC i.e. ₹55,727 and miscellaneous charges ₹11,800/-. Further, the project



lacks basic infrastructural amenities and the facilities already laid at site are in detrioting condition. Complainant has filed present complaint seeking relief of delay interest on account of delay caused in delivery of possession, withdrawal of increased area charges, EEFC charges, , club charges , PLC charges and other charges which were not payable by the complainant.

2. Mr. Sushil Kumar, learned counsel for the complainant (in complaint no. 133 & 136 of 2022) submitted that admittedly respondent has issued possession certificate to the complainant in the year 2018 but said possession is only a possession on paper since the complainant is not able to enjoy the rights attached to said possession since the unit is still incomplete. Respondent had issued an offer of possession without obtaining occupation certificate. It is the complainants who are suffering at the site because of lack of basic infrastructural facilities. Further, at the time of offer of possession respondent merely informed the complainant that the area of the flat has been increased without providing any justification or on site measurement. Also the respondent has illegally charged from the complainant on account of parking, preferential location and club membership, even though there is no club at site, and other miscellaneous expenses which were not to be paid by the complainant. Therefore, he



requested that direction be issued to respondent to pay delay interest from deemed date of possession till the date an actual offer of possession has been issued after obtaining occupation certificate. Respondent should also be directed to withdraw the illegal demands raised from the complainant.

3. On the other hand, learned counsel for the respondent stated that respondent after completion of construction and development works at site, has applied for grant of occupation certificate on 09.05.2014. However, the same has not been granted to them by the Department of Town & Country Planning till date. He stated that possession has already been offered to the complainant in the year 2018 and the complainant has been utilising the flat since then. At the time of offer of possession, complainant had signed the no objection certificate and were given one month's time to inspect the flat. Complainant had wilfully accepted the possession of the flat. Thus, he is only entitled to receive delay interest for the period from 2014 till 2018 and not beyond thereof. He further stated that the club is in existence at the site of the project and being enjoyed by the residents. Parking charge, preferential location charges and other charges objected by the complainant have been charged as per the agreement and wilfully paid by the complainant who did not raise any objection at the time of payment. With regard to



the increased area , learned counsel for the respondent submitted that the charges on account of increased area will be reduced as per the principles laid down in Complaint no. 607 of 2018 titled “ Vivek Kadyan Vs TDI Infrastructure Ltd”.

Ld. counsel for the respondent submitted that the facts and grievances in present bunch of matter is similar to Complaint no. 57 of 2021 titled “Prabhakar Kumar Vs TDi Infrastructure ltd” and that these bunch of cases can be decided in same terms. Complainant in present complaint have wilfully accepted possession of the booked flat and are therefore entitled to receiving delay interest only from the deemed date of possession till the date of possession certificate.

4. At this point, Mr. Arjun Kundra, learned counsel for the complainant (in complaint no. 183 of 2022) argued that as per clause 26 of the builder buyer agreement executed between the parties, the builder/ respondent continues to be the owner of the flat in question. Till the execution of conveyance deed the agreement does not give any right, title or interest in the said flat to the purchaser. Clause 26 of the agreement in reproduced below:

“The Purchaser agrees that unless a Sale/ Conveyance Deed is executed in his favour, the Company shall continue to be the owner of the said Apartment and this Agreement shall not give any right, title or interest in the said Apartment to the Purchaser.”



Since as per the terms of agreement, complainant cannot enjoy the rights and title attached to the booked plot till execution of conveyance deed, therefore, the possession offered to the complainant in 2018 cannot be called a valid possession until the conveyance deed has been executed in the name of the complainant. Thus the argument of the respondent that complainant is not entitled to received delay interest since possession has been taken is invalid.

5. Mr. Shiv Kumar, learned counsel for the complainant (in complaint no. 135 & 138 of 2022) submitted that vide order dated 25.01.2023 respondent was directed to file component wise chart of increase in super area of the unit of the complainant along with copies of earlier approved unit plan and revised approved unit plans of the complainant in each complaint. Same have not been filed.
6. After hearing submissions of all parties, Authority observes that the complainant is aggrieved by the fact that although the complainant has accepted possession of the booked flat in the year 2019 but said possession cannot be called a valid possession for two reasons, one being that there is a severe lack of basic infrastructural facilities at the site of the project and second, the project is yet to receive occupation certificate. Without occupation certificate, conveyance deed qua the flat booked by the complainant cannot be registered and without



conveyance deed complainant does not have any right or title pertaining to the booked flat. In such circumstances, even though complainant has executed an NOC and taken possession but the complainant is not able to enjoy his rights since it is not a valid possession. Therefore, complainant has prayed for delay interest from deemed date of possession till a valid offer of possession after obtaining occupation certificate. It is observed that complainant has been utilising the possession of the flat since the year 2018. Section 18 of the RERA Act provides for interest on account of delay in delivery of possession till the handing over of the possession which in this case has been accepted by the complainant. Now complainant has raised question in reward to the defective title of the flat in view of clause 26 of the builder buyer agreement. In order to effectively adjudicate the issue with regard to period of delay interest it is important to hear arguments of both parties on this issue in respect of provisions of Section 18 of the Act and clause 26 of the agreement. Authority on next date will hear arguments of concerned parties specifically to the period for which delay interest is admissible to the complainant.

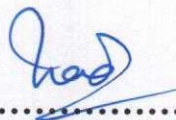
7. It has further been alleged by the complainant that respondent has raised charges on account of various heads which were not payable by the complainant. With regards to the conflict on account of the



demands raised by respondent, complainant is directed to file calculations of the amount allegedly charged by the respondent in excess along with demand letters issued by the respondent and the terms and conditions of allotment agreed between the parties according to which the demands should have been raised. These documents should be filed at least three weeks before the next date of hearing with advance copy supplied to the respondent. Respondent is at liberty to file objections, if any, to the calculations filed by complainant with advance copy supplied to complainant before the next date of hearing. No further opportunity will be granted to either of the parties.

8. Respondent shall also file component wise component wise chart of increase in super area of the unit of the complainant along with copies of earlier approved unit plan and revised approved unit plans of the complainant in all captioned complaints.
9. Cases are adjourned to 28.09.2023.


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DR. GEETA RATHEE SINGH
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]