

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

Complaint no. : 3939 of 2020  
638 of 2021  
First date of hearing: 23.12.2020  
Date of decision : 04.07.2022

Sabih Ur Rahman Khan  
R/o: U-24/28, First Floor,  
Pink Town House, DLF City Phase-III,  
Gurgaon, Haryana-122002

**Complainant**

Versus

M/s Imperia Wishfield Pvt. Ltd.  
**Regd. Office at:** - A-25, Mohan Cooperative  
Industrial Estate, Mathura Road, New Delhi,  
110044

**Respondent**

**CORAM:**  
Shri KK Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**  
Shri Akshit  
Shri Himanshu Singh

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 03.11.2020 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of



section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se. On the last date of hearing none has appeared on behalf of the respondent. Thus, the defense of the respondent was struck off. So, the authority is proceeding as per the pleadings and documents on the record.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

| S. No. | Heads                            | Information   |
|--------|----------------------------------|---|
| 1.     | Name and location of the project | "Elvedor" at sector 37C, Gurgaon, Haryana   |
| 2.     | Nature of the project            | Commercial Project  |
| 3.     | Project area                     | 02 acres  |
| 4.     | DTCP license no.                 | 47 of 2012 dated 12.05.2012 valid upto 11.05.2016   |
| 5.     | Name of license holder           | M/s Prime IT Solutions Pvt. Ltd.  |
| 6.     | RERA Registered/ not registered  | <b>Not Registered</b>   |
| 7.     | Unit no.                         | 7_A13, 7th floor, Tower Evita<br>(as per builder buyer agreement on page no. 56 of complaint) |



|     |                                 |  |
|-----|---------------------------------|--|
| 8.  | Unit measuring                  | 659 sq. ft.<br>(as per builder buyer agreement on page no. 56 of complaint)  |
| 9.  | Date of Allotment               | 07.10.2013<br>(as per allotment letter on page no. 35 of complaint)  |
| 10. | Date of builder buyer agreement | 17.02.2014<br>(page no. 50 of complaint)   |
| 11. | Due date of possession          | 17.02.2019<br>(Calculated as per possession clause of agreement)   |
| 12. | Possession clause               | <b>11(a) Schedule for possession of the said unit</b><br>The company based on its present plans and estimates and subject to all just exceptions endeavors to complete construction of the said building/said unit <b>within a period of sixty(60) months from the date of this agreement</b> unless there shall be delay or failure due to department delay or due to any circumstances beyond the power and control of the company or Force Majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the allottee(s) to pay in time the Total price and other charges and dues/payments mentioned in this agreement or any failure on the part of the allottee to abide by all or any of the |



|     |                                      |   |
|-----|--------------------------------------|---|
|     |                                      | terms and conditions of this agreement.   |
| 13. | Total consideration                  | Rs. 37,63,513/-<br>[as per agreement on page no. 56 of complaint]   |
| 14. | Total amount paid by the complainant | Rs. 21,80,501/-<br>[as alleged by complainant]<br>Rs. 18,61,526<br>[as per receipts annexed by complainant] |
| 15. | Occupation certificate               | Not received  |
| 16. | Offer of possession                  | Not offered   |

**B. Facts of the complaint**

3. That the respondent floated a project named as Esfera Elvedor to be constructed in sector-37C Gurugram. The complainant submitted an application form on 18.10.2012 and remitted a sum of Rs. 3,18,975/-.
4. That after application form the respondent issued a demand letter dated 20.12.2012 wherein he was required to pay the further amount of Rs. 5,03,054/-.
5. That he paid the amount through cash which was acknowledged by the respondent vide letter dated 27.12.2012. The acknowledgement letter shows receipt of amount of Rs. 5,03,054/- as well as booking of the complainant in "Elvedor Adus" project. While the complainant did not understand the difference between the "Esfera Elvedor" and "Esfera Adus".



6. That for several months neither any intimation was provided relating to the allotment nor buyers' agreement shared by the respondent. Finally, on 07.10.2013 the respondent provided an allotment letter wherein subject unit was allotted.
7. That on 07.10.2013 the respondent intimated the complainant that Bhoomi poojan of the project had been completed and excavation has commenced.
8. That respondent started raising the demands vide letters dated 22.10.2012, 09.05.2014, 10.07.2014 and 08.12.2014 from the complainant as per the stage of construction and the complainant paid the same.
9. That subsequently the complainant refused to pay the further amount till the execution of buyer's agreement and after that respondent executed the agreement on 17.02.2014.
10. That even after expiry of 8 years from the date of booking, till date only a rudimentary structure of one out of the several buildings forming part of the project has been erected on the project land which is incapable of possession. There is no development on the project for last four years and the construction activities have been stopped since 2016.
11. That the construction activities were stopped and there was no development in the project so the complainant wants the refund of its deposited amount.

**C. Relief sought by the complainant:**

12. The complainant has sought the following relief:



- Direct the respondent to refund an amount of Rs. 21,80,501/- deposited by complainant along with prescribed rate of interest.

#### **D. Jurisdiction of authority**

13. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

##### **D. I Territorial jurisdiction**

14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

##### **D. II Subject matter jurisdiction**

15. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

##### **Section 11(4)(a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

#### **Section 34-Functions of the Authority:**



*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

16. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

**E. Findings on the relief sought by the complainant.**

- Direct the respondent to refund an amount of Rs. 21,80,501/- deposited by complainant along with prescribed rate of interest.
17. That the complainant booked a commercial unit in the project of the respondent named as "Elvedor" situated at sector 37-C, Gurgaon, Haryana for a total sale consideration of Rs. 37,63,513/-. The complainant paid an amount of Rs. 21,80,501/-. The allotment of the unit was made on 07.10.2013 and the complainant was allotted the above-mentioned unit. The builder buyer agreement interse between the parties was executed on 17.02.2014. As per clause 11(a) of the builder buyer agreement the respondent has to handover the possession of the allotted unit within a period of 60 months from the date of execution of agreement. Therefore, the due



date for handing over of possession comes out to be 17.02.2019.

18. Keeping in view the fact that the allottee complainant wishes to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein the matter is covered under section 18(1) of the Act of 2016.
19. The due date of possession as per agreement for sale as mentioned in the table above is 17.02.2019 and there is delay of 1 year 8 months 17 days on the date of filing of the complaint.
20. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019**, decided on 11.01.2021

*"" ... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can*





*they be bound to take the apartments in Phase 1 of the project....."*

21. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)** reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020** decided on 12.05.2022. it was observed

*25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed*

22. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified



therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

23. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
24. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 21,80,501/- with interest at the rate of 9.50% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**F. Directions of the authority**

25. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
  - i. The respondent/promoter is directed to refund the amount received by him i.e., Rs. 21,80,501/- with



interest at the rate of 9.50% as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

26. Complaint stands disposed of.

27. File be consigned to registry.

V.K. - 3  
**(Vijay Kumar Goyal)**  
Member

  
**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 04.07.2022**