

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

Complaint no. : 3016 of 2020
First date of hearing: 21.01.2021
Date of decision : 04.07.2022

Gautam Bhandari
Address: H. No. 100, Greenwood City,
Sector-45, Gurugram.

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 Siddhant Sharma Advocate for the complainant
Shri Himanshu Singh Advocate for the respondent

ORDER

1. The present complaint dated 06.10.2020 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.

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	Not Registered
7.	Apartment no.	1_117, 1st floor, Tower IBIS (as per provisional allotment letter on page no. 11 of complaint)
8.	Unit measuring	221 sq. ft. (as per provisional allotment letter on page no. 11 of complaint)
9.	Welcome letter	19.11.2012 [page no. 7 of complaint]



10.	Date of provisional allotment	11.01.2016 (page no. 11 of complaint)
11.	Date of builder buyer agreement	Not executed
12.	Due date of possession	28.09.2017 (Calculated on the basis of the date of booking application i.e., 28.09.2012 in the absence of buyer's agreement)
13.	Possession clause [Possession clause taken from the BBA annexed in complaint no. 4038 of 2021 of the same project being developed by the same promoter]	11(a) Schedule for possession of the said unit 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 within a period of sixty(60) months from the date of this agreement 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.
14.	Total consideration	Rs. 17,84,575/- [as alleged by complainant]



15.	Total amount paid by the complainant	Rs. 6,46,151/- [as alleged by complainant]
16.	Occupation certificate	Not received
17.	Offer of possession	Not offered

B. Facts of the complaint

3. That the promoter issued an advertisement in newspaper(s)/other media inviting applications for purchase of commercial unit in the project "Elevador" located at sector 37 C, Gurugram.
4. That the complainant booked a commercial unit on 28.09.2012 for the above-mentioned unit for a basic sale price of Rs. 8075/- sq. ft. and total sale consideration of Rs. 17,84,575/- under the construction linked payment plan.
5. That the respondent has breached by delaying the project as booking was done 28.09.2012, but no builder buyer agreement was executed though the project was to be handed over within 36 months as informed by the respondent, and no construction has been done till date.
6. That the complainant till date has made a payment of Rs. 6,46,151/- and contacted the respondent for refund but no positive response was given by them. That finally on 13.07.2020 he wrote an email to the respondent and still after that no response was received. The complainant went to see the construction at site but was in shock to see that the same has not even yet started in the last 8 years and could see only barren land.



7. That the respondent has committed breach of trust and has cheated the complainant. He has suffered great hardship and mental agony due to the acts of the respondent. It has used the money collected from the complainant for the purpose other than construction.

C. Relief sought by the complainant:

8. The complainant has sought the following relief:
- Direct the respondent to refund an amount of Rs. 6,46,151/- paid by the complainant along with interest @ 24% per annum.
 - Direct the respondent to pay compensation of Rs. 10 lacs for mental agony, harassment and loss of opportunity as per the act paid till date.
 - Direct the respondent to pay litigation charges.
9. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

10. That the present complaint has been filed by the complainant against the respondent in respect of the tower "IBIS" being developed by the respondent in its group housing project titled as "Elvedor Retail", situated at sector-37C Gurgaon, Haryana.
11. That the flat no. I_117, in tower- IBIS situated in the said project, was allotted to the complainant by the respondent



vide booking dated 28.09.2012 on the terms and condition mutually agreed by the parties.

12. That the respondent had intended to complete the construction of the said flat on time. It is pertinent to mention that it had successfully completed the civil construction of the said tower. The internal and external finishing work is remaining of these towers. It is willing to complete the same within next six - nine months tentatively. However, the delay in handing over the project has occurred due to certain force majeure circumstance, inter alia includes the Covid-19.
13. That the respondent endeavour to complete the construction and development works in first quarter of 2022. Thus by June 2022, the respondent would be in a position to hand over the allotted unit to the complainant & other eligible allottees provided they comply with all agreed payment terms.
14. That the said project is a commercial project being developed on 02 acres situated at sector 37-C, Gurugram, Haryana and comprises of retail and studio apartments. The foundation of the said project vest on the term sheet executed between M/s Prime IT Solutions Pvt. Ltd. and Imperia Structure Pvt. Ltd. lying down the transaction structure for this project and collaboration agreement dated 06.12.2012 as executed between M/s Prime IT Solutions Private Limited and M/s Imperia Wishfield Pvt. Ltd. In terms of the said collaboration agreement, the second party i.e., Imperia Wishfield Pvt. Ltd is legally entitled to undertake construction and development of the project at its own costs, expenses and resources in the



manner it deems fit and proper without any obstruction and interference from any other party.

15. That it has already obtained letter of intent ("LOI") from the department of town and country planning, Government of Haryana on 24.05.2011 and subsequent license from the department of town and country planning, Government of Haryana as necessary for setting up a commercial project on the land admeasuring 2.00 acres in the revenue estate of Village Gadoli Khurd, Sector 37 C, Gurugram on 12.05.2012 along with the Zoning Plan. (License No. 47 of 2012, dated 12.05.2012). The building plans of the said project being developed under above mentioned license no. 47 of 2012 was approved on 25.06.2013. It is very pertinent to mention here that even before the execution date of above referred collaboration agreement between M/s Prime IT Solutions Private Limited and Imperia Wishfield Pvt. Ltd., both these companies had under the same management and directors.
16. That it is also agreed between both M/s Imperia Wishfield Pvt. Ltd. and M/s Prime IT Solutions Pvt. Ltd. that regardless of execution of collaboration agreement dated 06.12.2012, M/s Prime IT Solutions Pvt. Ltd. shall remain actively involved in the implementation of project.
17. That the project elvedor is developed on a part and parcel of licensed land which is transferred to the respondent company for development by the collaborator company on exclusive basis. At present the company m/s Imperia Wishfield Pvt. Ltd. is a lawful owner in possession of project site and is trying best



to mobilize all its available resources to re commence the construction activities.

18. That several allottees have withhold the remaining payments, which is severally affecting the financial health of the respondent. Further due to the force majeure conditions and circumstances/reasons, which were beyond the control of the respondent company as mentioned herein below, the construction works got delayed at the said project.

- i. That the respondent company started construction over the said project land after obtaining all necessary approvals and sanctions from different state/ central agencies/ authorities and after getting building plan approved from the authority and named the project as "Elvedor". The respondent company had received applications for booking of apartments in the said project by various customers and on their requests, it allotted the under-construction apartments/ units to them.
- ii. That, owing to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court ordered a ban on construction activities in the region from November 4, 2019, onwards, which was a blow to realty developers in the city. The SC lifted the ban conditionally on December 9, 2019 allowing construction activities to be carried out between 6 am and 6 pm, and the complete ban was lifted by the Hon'ble Supreme Court on 14h February, 2020.
- iii. That, when the complete ban was lifted on 14th February 2020 by the Hon'ble Supreme Court, the Government of



India imposed National Lockdown on 24th of March 2020 due to pandemic COVID-19, and conditionally unlocked it in 3rd May, 2020, However, that has left a big impact on the procurement of material and labour. The 40-day lockdown in effect since March 24, which was further extended up to May 3 and subsequently to May 17, leading to a reverse migration with workers leaving cities to return to their villages. It is estimated that around 6 lakh workers walked to their villages, and around 10 lakh workers were stuck in relief camps. The aftermath of lockdown or post lockdown periods the same have left great impact and scars on the sector for resuming the fast-paced construction for achieving the timely delivery as agreed under the allotment letter.

- iv. That initially, after obtaining the requisite sanctions and approvals from the concerned Authorities, the respondent company had commenced construction work and arranged for the necessary infrastructure including labour, plants and machinery, etc. However, since the construction work was halted and could not be carried on in the planned manner due to the force majeure circumstances detailed above, the said infrastructure could not be utilized and the labour was also left to sit idle resulting in mounting expenses, without there being any progress in the construction work. Further, most of the construction material which was purchased in advance got wasted/deteriorated causing huge monetary losses.



Even the plants and machineries, which were arranged for the timely completion of the construction work, got degenerated, resulting into losses to the respondent company running into crores of rupees.

- v. That every year the construction work was stopped / banned / stayed due to serious air pollution during winter session by the Hon'ble National Green Tribunal (NGT), and after banned / stayed the material, manpower and flow of the work has been disturbed / distressed. Every year the respondent company had to manage and rearrange for the same and it almost multiplied the time of banned / stayed period to achieve the previous workflow.
- vi. The real estate sector so far has remained the worst hit by the demonetization as most of the transactions that take place happen via cash. The sudden ban on Rs 500 and Rs 1000 currency notes has resulted in a situation of limited or no cash in the market to be parked in real estate assets. This has subsequently translated into an abrupt fall in housing demand across all budget categories. Owing to its uniqueness as an economic event, demonetisation brought a lot of confusion, uncertainty – and, most of all, especially when it came to the realty sector. No doubt, everyone was affected by this radical measure, and initially all possible economic activities slowed down to a large extent, which also affected the respondent company



to a great extent, be it daily wage disbursement to procuring funds for daily construction.

vii. That there is extreme shortage of water in State of Haryana and the construction was directly affected by the shortage of water. Further the Hon'ble Punjab and Haryana High Court vide an Order dated 16.07.2012 in CWP No. 20032 of 2009 directed to use only treated water from available sewerage treatment plants. As the availability of STP, basic infrastructure and availability of water from STP was very limited in comparison to the requirement of water in the ongoing constructions activities in Gurgaon District, it was becoming difficult to timely schedule the construction activities.

19. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of authority

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

E. I Territorial jurisdiction

21. 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.

E. II Subject matter jurisdiction

22. 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.

23. 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.

F. Findings on the objections raised by the respondent:

F.1 Objection regarding force majeure conditions:

24. The respondent-promoter raised the contention that the construction of the project was delayed due to force



majeure conditions such as national lockdown, shortage of labour due to covid 19 pandemic, stoppage of construction due to various orders and directions passed by hon'ble NGT, New Delhi, Environment Pollution (Control and Prevention) Authority, National Capital Region, Delhi, Haryana State Pollution Control Board, Panchkula and various other authorities from time to time. But all the pleas advanced in this regard are devoid of merit. As per the possession clause 11, the possession of the said unit was to be delivered within a period of 60 months from the date of this agreement. The builder buyer agreement was not executed between the parties. So, the due date is calculated on the basis of the date of booking application i.e., 28.09.2012 in the absence of buyer's agreement as per the possession clause taken from the BBA annexed in complaint no. 4038 of 2021 of the same project being developed by the same promoter. Hence, the due date comes out to be 28.09.2017. The authority is of the view that the events taking place after the due date do not have any impact on the project being developed by the respondent/promoter. Thus, the promoter/ respondent cannot be given any leniency based on aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

G. Findings on the relief sought by the complainant.

- Direct the respondent to refund an amount of Rs. 6,46,151/- paid by complainant along with interest @ 24% per annum.



25. The complainant booked a commercial unit on 28.09.2012 in the project of the respondent detail above for a total sale consideration of Rs. 17,84,575/- out of which he has made a payment of Rs. 6,46,151/-. The respondent builder sent a welcome letter on 19.11.2012 and thereafter issued provisional allotment letter on 11.01.2016.
26. On consideration of record and submissions the authority is of the view that no builder buyer agreement has been executed between the parties till date. So, the possession clause for calculating the due date is taken from the compliant no. 4038 of 2021 of the same project being developed by the same promoter. Hence, due date is calculated on the basis of the date of booking of the unit i.e., 28.09.2012 in the absence of buyer's agreement which comes out to be 28.09.2017.
27. 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.
28. The due date of possession as per agreement for sale as mentioned in the table above is 28.09.2017 and there is delay of 3 years 8 days on the date of filing of the complaint.
29. 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.....”

30. 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

31. 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.
32. 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.
33. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 6,46,151/- 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*.



- Direct the respondent to pay compensation of Rs. 10 lacs for mental agony, harassment, and loss of opportunity.
 - Direct the respondent to pay litigation charges.
34. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.** (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority

35. 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 i.e., Rs 6,46,151/-received by him from the complainant along with interest at the rate of 9.50% p.a. 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 deposited 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.

36. Complaint stands disposed of.

37. File be consigned to registry.

v.l - 
(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 04.07.2022