

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

Complaint no. : 343 of 2018
First date of hearing: 25.07.2018
Date of decision : 04.07.2022

Uma Garg
R/o: -A3/5, DLF Phase I,
Gurgaon,122002

Complainant

Versus

M/s Imperia Wishfield Pvt. Ltd.
Regd. office at: A 25, Mohan Co-Operative
Industrial Estate, Mathura Road, 110044,
New Delhi

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

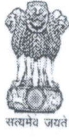
APPEARANCE:

Sh. Sukhbir Yadav
Sh. Himanshu Singh

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 28.05.2018 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 19(4) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the provision of the Act or the Rules and regulations made there

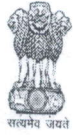


under or to the allottee as per the agreement for sale executed *inter se*. The reply on behalf of the respondent has not been received. However, the AR of the respondent appeared and the authority vide several orders imposed a cost a Rs. 10,000/- and 20,000/- which were also not paid by the respondent. So, the defence of the respondent was struck of vide order dated 04.08.2021. Thus, 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.N o.	Heads	Information
1.	Project name and location	"Elvedor" at sector 37C, Gurgaon, Haryana
2.	Project area	2 acres
3.	Nature of the project	Commercial Project
4.	DTCP license no. and validity status	47 of 2012 dated 12.05.2012 valid upto 11.05.2016
5.	Name of licensee	M/s Prime IT Solutions Pvt. Ltd.
6.	RERA Registered/ not registered	Not Registered
7.	Unit no.	B-1118 (page no. 26 of complaint)



8.	Unit measuring	221 sq. ft. (page no. 26 of complaint)
9.	Date of booking	25.09.2012 [as per payment receipt on page no. 23 of complaint]
10.	Date of execution of Flat buyer agreement	Not executed
11.	Total consideration	Rs. 18,03,360/- [as alleged by complainant]
12.	Total amount paid by the complainant	Rs. 4,69,612/- [as per receipts on page no. 23 and 25 of complaint]
13.	Surrender letter by complainant	10.12.2015, 30.01.2016
14.	Due date of delivery	25.09.2017 (Calculated on the basis of the date of booking application i.e., 25.09.2012 in the absence of buyer's agreement)
15.	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.
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint

3. That the complainant booked a retail shop admeasuring 221 sq. ft. in the project elvedor retail at first floor, sector 37-C, Gurgaon vide unit no. B-1118 for a total sale consideration of Rs. 18,03,360/- and issued a cheque of Rs. 1,80,336/- as booking amount on 25.09.2012.
4. That on 07.11.2012 the respondent issued a demand letter and asked for payment of Rs. 2,89,276/-. The said demand was also met by complainant on 17.11.2012.
5. That on 17.11.2012, real estate agent issued a credit note to complainant and promised to pay 1% discount on basic sale price against the allotted unit.



6. That on 10.12.2015 the complainant send a request letter for refund of money on account of delay in start of the construction of project. Further on 05.01.2016 the respondent send a demand letter and thereafter no demand were raised by respondent.
7. That the complainant had already made payment of Rs. 4,69,612/- i.e., 25% of the total sale consideration. On 30.01.2016 the complainant send a withdrawal application along with an affidavit.
8. The main grievance of the complainant in the complaint is that despite of having paid more than 25% of the actual amount of shop and ready and willing to pay the remaining amount, the respondent has failed to start the construction and failed to give possession of the shop on promised time.
9. That the complainant and her husband also visited several times the office of respondent for refund of money. She also served multiple grievances letters to the respondent at the office address and personally requested to executive/office bearer of respondent before filing of this complaint.
10. That the complainant is entitled to get refund of paid up amount along with the prescribed rate of interest besides any other relief to which she is found entitled by this Hon'ble Authority.

C. Relief sought by the complainant:

- i. Direct the respondent to refund the paid amount of Rs. 4,69,612/- along with interest.

D. Jurisdiction of the authority



11. 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

12. 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

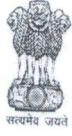
13. Section 19(4) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 19(4) is reproduced as hereunder:

Section 19(4)

The allottee shall be entitled to claim the refund of the amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

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.



14. 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

- **Relief sought by the complainant:** Direct the respondent to refund the paid amount of Rs. 4,69,612/- along with interest.

15. The complainant booked a retail shop in the project of the respondent detailed above for a total sale consideration of Rs. 18,03,360/- and out of which she made a payment of Rs. 4,69,612/- through cheques. However, on 05.01.2016 the complainant sent a request to the respondent for refund of an amount of Rs. 4,69,612/- paid by her.

16. 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 project being developed by the same promoter. Hence, due date is calculated on the basis of the date of booking application i.e., 25.09.2012 in the absence of buyer's agreement and which comes out to be 25.09.2017.

17. The complainant has surrendered her unit vide withdrawal letter dated 10.12.2015 and 30.01.2016 respectively. The



authority is of the view that in case of surrender by complainant before the due date the amount paid should be refunded to her after deduction as per the agreement. In the present case it has been observed that no builder buyer agreement has been executed between the parties. So, the deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which states that-

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

18. Keeping in view the aforesaid legal provisions, the respondent shall refund the deposited amount after forfeiting 10% of the basic sale price of the unit within a period of 90 days from the date of this order and failing which it shall pay the amount due along with prescribed rate of interest.
19. During the course of arguments, it was submitted by the respondent that license for the project was issued in the name of M/s Prime IT Solutions Pvt. Ltd. and that person had not been added as a party in the complaint. It is not disputed



that all the payments against the allotted units were made to the respondent. No buyer's agreement was executed between the parties with regard to the allotted unit so as per the explanation attached with section 2(zk) of the Act of 2016, both i.e., the respondent as well as M/s Prime IT Solutions Pvt. Ltd. are to be treated as promoters and are jointly liable as such for functions and responsibilities specified under the Act of 2016 or the rules and regulations made thereunder.

20. The project was not got registered with the authority by the respondent. So, the authority directs the planning branch to intimate the status of penal proceedings pending against the promoters for not registering the project with the authority. A copy of this order be sent to the planning branch of the authority for doing the needful.

F. Directions of the authority

21. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):

- i. The respondent /promoter is directed to refund the deposited amount of Rs. 4,69,612 after deducting 10% of the basic sale price of the unit within a period of 90 days from the date of this order along with interest @ 9.50% p.a. on the refundable amount from the date of surrender letter by complainant i.e., 10.12.2015 till the date of its payment.



HARERA
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Complaint No. 343 of 2018

22. Complaint stands disposed of.
23. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 04.07.2022



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