

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

Complaint no. : 4955 of 2020
First date of hearing: 26.02.2021
Date of decision : 04.07.2022

Tripta Jain

R/o: H.no. 310, Ground Floor,
Block D, Sushant Lok 2, Sector-56,
Gurugram, Haryana-122001

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 Abhay Jain
Shri Himanshu Singh

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 12.01.2021 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 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.

2. As per the records available, the registry has sent notice to both the parties which was properly delivered as per tracking report available in file. Further vide order dated 26.02.2021, the complaint was ordered to be dismissed for want of prosecution as none has appeared on behalf of the complainant. Thereafter the complainant filed an application for restoration of complaint on 16.04.2021 and the same was allowed.
3. Thereafter, the registry sent a notice through email to appear before the adjudicating officer but none from the side of respondent has appeared. So, the defence of the respondent was struck off and the authority is proceeding as per the pleadings and documents on the record.
 - A. **Unit and project related details**
4. 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.	Unit no.	Finally allotted unit E.021 (as per allotment letter on page no. 35 of complaint) Initially booked unit A006, Ground Floor, Block A (as per application letter on page no. 28 of complaint)
8.	Unit measuring	315 sq. ft. (as per allotment letter on page no. 35 of complaint)
9.	Date of booking	31.08.2012 (page no. 31 of complaint)
10.	Date of Allotment	23.08.2013 (page no. 35 of complaint)
11.	Date of builder buyer agreement	Not Executed
12.	Application for withdrawal	25.02.2015 (page no. 43 of complaint)
13.	Confirmation for withdrawal by promoter	05.08.2016 [page no. 52 of complaint]
14.	Due date of possession	31.08.2017 (Calculated on the basis of the date of booking application i.e.,

		31.08.2012 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.	Total consideration	Rs. 31,92,914/- [as per allotment on page no. 35 of complaint]
17.	Total amount paid by the complainant	Rs. 9,38,705/- [as alleged by both parties]
18.	Occupation certificate	Not received
19.	Offer of possession	Not offered

B. Facts of the complaint

5. That the complainant booked commercial unit in the project floated by the respondent namely "Elvedor" situated at Sector-37C, Gurgaon, Haryana and paid a booking amount of Rs. 2,59,717/-.
6. That the complainant further paid a Rs. 1,09,640/- and Rs. 3,00,000/- towards second instalment on 24.10.2012 which was duly acknowledged by the respondent.
7. The respondent issued an allotment letter on 23 August 2013 wherein original allotment was changed to unit no. E.021 from A-006, which was earlier allotted at the time of booking measuring 315 sq. ft. of super area.
8. That the respondent through demand letter raised a demand of Rs. 2,69,348/- which was duly paid by the complainant. Thereby, a total of Rs. 9,38,705/- for the commercial unit from August 2012 to October 2013 was paid to the respondent.
9. That the respondent kept the complainant in dark about the actual and true status of the construction of her commercial unit. The respondent kept telling the complainant that her commercial unit would be ready as per the commitments and the promises made to her. The complainant had reposed faith in the representations made by the respondent, about the development of the project. The respondent kept raising demands, but the construction activities were not visible at the project site.

10. That due to sluggish attitude of the respondent in developing and constructing the unit and due to financial problems faced by the complainant, the allotment of the unit was surrendered by the complainant on 25.02.2015 by following prescribed procedure and the complainant submitted the withdrawal application, affidavit and NOC issued by the agent to the respondent so that the refund process is initiated in timely manner.
11. That the complainant approached the respondent and requested refund of her deposited amount on numerous occasions.
12. That after much persuasion by her on 5th August 2016 almost one and half year later, the respondent issued a certificate wherein the respondent acknowledged that a total amount of Rs. 9,38,705/- has been received by the respondent and after deductions of Rs. 1,96,524/- a total sum of Rs. 7,42,184/- is liable to be refunded.
13. That even after more than 7 years and 2 months from the date of refund application till date, the respondent has failed to take any remedial measures and has not refunded the deposited amount with interest.

C. Relief sought by the complainant:

14. The complainant has sought the following relief:
 - Direct the respondent to refund an amount paid by the complainant of Rs. 9,38,705/- along with interest.

- Direct the respondent to pay legal expenses of Rs. 1,00,000/- incurred by complainant.

D. Jurisdiction of authority

15. 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

16. 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

17. 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.

18. 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 paid by the complainant of Rs. 9,38,705/- along with interest.**

19. The complainant booked a commercial unit in the project named as Elvedor at sector 37 C, Gurugram for a total sale consideration of Rs. 31,92,914/- on 31.08.2012 and paid a booking amount of Rs. 2,59,717/-. Further she paid sum of Rs. 1,09,640/- and Rs. 3,00,000/- as second instalment and subsequently the allotment of the unit was made. The unit was changed from the unit which was earlier booked and another instalment of Rs. 2,69,348/- was made by the complainant on 22.10.2013. Therefore, in total the complainant has made a total payment of Rs. 9,38,705/-.

20. 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 application i.e., 31.08.2012 in the absence of buyer's agreement which comes out to be 31.08.2017.
21. The complainant due to her financial problems surrendered the allotment of the subject unit and submitted withdrawal application, affidavit and NOC to the respondent on 25.02.2015(annexed on page no. 43 of complaint). Subsequently the respondent vide letter dated 05.08.2016 acknowledged the received amount is Rs. 9,38,705/- less Rs. 1,96,521/- shall be deducted amounting to Rs. 7,42,184/-.
22. The complainant has surrendered her unit vide withdrawal letter dated 25.02.2015. 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."

23. 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 failing which it shall pay the amount due along with prescribed rate of interest.
24. 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.
25. 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.

- **Direct the respondent to pay legal expenses of Rs. 1,00,000/- incurred by complainant.**

26. 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.

F. Directions of the authority

27. 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 deposited amount of Rs.9,38,705/- 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 confirmation of withdrawal i.e., 05.08.2016 till the date of its payment.

28. Complaint stands disposed of.
29. File be consigned to registry.

V1-3
(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 04.07.2022