

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

Complaint no. : 214 of 2019
Date of First hearing: 23.04.2019
Date of decision : 02.07.2019

Mr. Ravinder Singh
R/o House no. 12/5, Basai, Near Sector-9,
Gurugram, Haryana-122001

Versus

Complainant

M/s Imperia Structure Ltd.
Office at: A-25, Mohan Co-operative
Industrial Estate, Mathura Road,
New Delhi-110044

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shree Pradeep Singh Advocate for the complainant
Shri Ishaan Dang Advocate for the respondent

ORDER

1. A complaint dated 07.02.2019 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Ravinder

Singh against the promoter M/s Imperia Structure Ltd. in respect of apartment described below in the project 'The Esfera', on account of violation of the section 11(4)(a) of the Act *ibid*.

2. Since the apartment buyer's agreement has been executed on 10.09.2013, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"The Esfera" in Sector 37C, Gurugram
2.	Project area	17 acres
3.	Nature of project	Residential colony/ township
4.	Unit no.	302, tower D, 3 rd floor
5.	Unit area	1435 sq. ft.
6.	Registered/ not registered	352 of 2017 dated 17.11.2017
7.	Registration valid upto	31.12.2020

8.	DTCP license	64 of 2011 dated 16.07.2011
9.	Apartment buyer's agreement	10.09.2013
10.	Date of booking	10.09.2011
11.	Allotment letter dated	10.03.2012
12.	Total sale consideration	Rs. 63,16,731/-
13.	Total amount paid by the complainant	Rs. 52,47,600/-
14.	Payment plan	Construction linked plan
15.	Due date of delivery of possession as per clause 10.1 of the apartment buyer's agreement Within three and half year from the date of this agreement	10.03.2017
16.	Delay of number of months/ years till date of decision	2 year, 3 month and 21 days
17.	Penalty clause as per Apartment buyer's agreement 11.4	clause 11.4- Rs.5/- per sq. ft. of super area per month for the period of delay

4. The details provided above have been checked on the basis of the record available in the case file. An Apartment buyer's agreement is placed on record for the aforesaid unit according to which the possession of the same was to be delivered by 10.03.2017. Neither the respondent has delivered the possession of the said unit nor they have paid any compensation @ Rs.5/- per sq. ft. per month of the super area of the said unit for the period of such delay as per clause 11.4

of the said allotment letter. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 23.04.2019 and 02.07.2019. The respondent through its counsel appeared on 23.04.2019. The reply filed on behalf of the respondent and has been perused.

Facts of the complaint

6. The complainant submitted that in year 2011-12, the respondent company invited applications from general public for the allotment of flat/apartment in their upcoming project/housing complex namely "*The Esfera*" to be constructed in Sector-37-C, Gurugram.
7. The complainant submitted that he was allured by the representations of the officials of the respondent company solicited to book a flat in their upcoming project "*The Esfera*" in sector 37-C, Gurugram, that relying upon the assurances of their representative and upon the contents / particulars given

in the brochure, he submitted an application dated 10-09-2011 for registration/ allotment of a residential flat/ apartment measuring 1435 sq. ft, in the said project/ housing complex and paid Rs 4,00,000/- vide cheque no. 533775 dated 08.09.2011 drawn on ICICI Bank Noida in favour of the respondent company as earnest money.

8. At the time of booking of the said residential apartment/flat the respondent company also assured the complainant that they would issue the provisional allotment letter and execute the apartment buyer's agreement in a very short span of time.
9. The complainant submitted that in the month of January 2012, the respondent company raised the demand of 1st instalment on which the complainant paid them Rs. 5,28,214/- vide cheque dated 12.01.2012 bearing no. 550751 drawn on ICICI bank Noida.
10. The complainant submitted that after many requests and lots of pursuance the respondent company on 10.03.2012 issued a provisional allotment letter of flat no 302, third floor, tower D, in their project "THE ESFERA" having a super area of 133.36

sq. meter. (1435 sq. feet) along with one covered car parking in favour of the complainant.

11. The complainant submitted that on 10.09.2013 a formal apartment buyer's agreement was executed between the complainant and the respondent company and as per the term and condition of this agreement given in clause 10.1 the respondent company has to give the possession of this flat to the allottee within a period of three and a half year from the date of execution of this agreement.
12. The complainant submitted that on 06.01.2017 the respondent company further raised demand of Rs. 4,75,119/- that on receiving this demand the complainant sent an e-mail to the respondent company and complaint about not receiving any reply of his mail dated 30.11. 2016 and also about delay in construction and non delivery of possession even after paying more than Rs. 52,47,600/-i.e 85% of the cost and warned the respondent company that in these circumstances he is going to avail the legal remedy .

13. On 24.01.2017 the complainant received an e- mail from the respondent company in which it was written that the construction of tower F, G, H will be completed by April 2017 and rest of the tower by April 2018.
14. On 03.04.2017 the complainant received a letter from the respondent company in which the company offered him an alternate accommodation in group housing society named “ Takshila Heights” at sector 37-C Gurugram till the completion of the project and also that they will bear the rent of this property till the possession of the flat is offered.
15. The complainant submitted that in reply to the respondent companies letter dated 03.04.017 the complainant sent an e-mail on 16.04.2017 and ask them to pay the rent of his current apartment in “Vijay Rattan Vihar” in sector 15 part II Gurugram in which he is living right now and paying a rent of Rs 22000/-.
16. The complainant submitted that on 22.04.2018 the complainant sent an e-mail to the respondent company and requested them to withdraw any demand beyond already paid

amount by him till an audit is constituted between the Imperia, flat buyers, and representatives of HARERA and that further payment is to be linked to delivery promise and fulfilment of the same.

17. On 16.09.2018 the complainant again sent a letter to the respondent company and complaint about the extensive delay in delivery of his unit D-302 and that even after passing of seven years there is no concrete answer from their side regarding the possible delivery date for the aforesaid project.
18. It is submitted that in a democratic society, the respondent cannot be allowed to act despotically and arbitrarily, fraudulently adopting unfair practice simply because of the reason that the respondent company has a monopoly and as such it has now got an upper hand by withholding the hard money of the poor complainant.
19. **Issues raised by the complainant as per amendment:-**
 - i. Whether the complainant is entitled to interest on the amount advanced by him on account of delay in delivery of possession of the flat?

20. Relief sought

- i. Direct the respondent company to pay interest (@ prescribed rate) on Rs.52,47,600/- i.e the amount already paid by the complainant till its realization to the complainant.
- ii. Grant any other relief in favour of the complainant as the hon'ble authority may deem fit and proper in the fact and circumstances of the case.

Reply on behalf of the respondent

21. The respondent submitted that each and every statement, contentions and allegations contained in the complaint unless specifically admitted hereinafter, are denied in their entirety as though specifically set forth and traversed herein. Further, it is submitted that the complainant has not approached this hon'ble authority with bonafide intent as an evident attempt has been made to gain undue advantage by misrepresenting and twisting the material facts and circumstances herein. Further, the complaint cannot seek any relief from the

complaint as the complaint is mala fide, false, frivolous and misconceived and hence lacks merit. The complaint, thus, is not entitled to claim any equities from the complaint by way of the present complaint.

22. The respondent submitted that the complainant is an 'Investor' who has made investment in the esteemed project namely "the Esfera" located at Sector 37C Gurgaon Haryana. Accordingly, the complainant was allotted a residential apartment bearing unit no. 302 in tower D admeasuring 1435 sq. ft. on the 3rd floor of the project "Esfera". The complainant had opted for construction linked payment plan and had till date paid an amount only of Rs.52,47,600/-against the said residential apartment.

23. The complainant after being fully satisfied with the progress of the said project of the respondent and after duly understanding the terms and conditions that are associated with the construction and completion of the project, entered into an apartment buyer agreement dated 10.09.2013 with the respondent and accordingly a flat/unit bearing no. 302, tower-

D, Esfera, Sector 37C, Gurugram, Haryana having an area of 1435 sq. ft. for a total sale consideration of Rs. 66,24,777/- was allotted to him. Apartment buyer agreement dated 10.09.2013 was signed by the complainant after going through the contents of the same wherein the delay in handing over possession beyond the control of the respondent is clearly covered.

24. The respondent submitted that on perusal of the complaint filed by the complainant it appears that the complainant purchased a unit in the project "Esfera" of the respondent. It is pertinent to mention here that the project Esfera is spread in 17 acres of land in Sector 37 C of district Gurugram and the construction activity is going on in full swing. It is further submitted that the construction of the tower D, in which the complainant have been allotted the unit is on the verge of completion. It is further submitted that towers F, G and H in the aforesaid project have been duly completed and the respondent accordingly applied for the occupation certificate on 20.06.2017 which is imperative for handing over of

possession in accordance with law, however, the competent authority granted the said occupancy certificate to the respondent on 07.02.2018.

25. The respondent submitted that the construction work for towers A, B, C and D is going on in full swing and respondent shall hand over the possession of the said unit as per the timelines provided to the RERA. As per the apartment buyer's agreement, the possession of the flat was to be handed over to the complainant within 42 months from the date of execution of the apartment buyer agreement subject to other terms and conditions of the said agreement.

26. The respondent submitted that without admitting anything herein under, there is no delay which can be attributed to respondent in completing the construction and handing over the flats to the complainant. The delay mainly occurred in getting all statutory clearances from the concerned statutory authorities, lack of availability of the raw materials, labor strikes, ban on construction activities and delay caused in obtaining the clearance for water supply which was hindered

in the locality due to the restrictions imposed by the Hon'ble High Court of Punjab and Haryana in C.W.P. 20032 of 2008 which was supplemented by the office order dated 13.09.2012 passed by the Town and Country Planning Department, Govt. of Haryana.

27. The respondent submitted that the statutory clearances, labor strikes, deficit in the supply of raw materials and restrictions imposed by the Hon'ble High Court of Punjab and Haryana are not within the control of the respondent herein and therefore, is an event of *force majeure* in present facts and circumstances of the case.

28. The respondent further submitted that the "force majeure" is governed by the Indian Contract Act, 1872. The Hon'ble Supreme Court of India held that in so far as a force majeure event occurs de hors the contract, it is dealt with by a rule of positive law. The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose of the parties. Thus, the present complaint is a subject matter of trial and hence the

hon'ble authority does not have the requisite jurisdiction to adjudicate upon the said dispute and as such the present complaint is not maintainable.

29. The respondent submitted that vide clause 11.1 of the apartment buyer's agreement, the complainant has duly consented that in the event of *force majeure*, the respondent will be entitled to extension of time for the delivery of possession of the said unit. Hence, the respondent is duly entitled to an extension of time due on account of abovementioned reasons which would fall within the ambit of *force majeure*.

30. It is further submitted that the construction of the tower D, in which the complainants have been allotted the unit is on the verge of completion. It is further submitted that the said project is divided into 2 phases. The respondent has duly completed towers F, G and H and accordingly applied for the occupation certificate on 20.06.2017 which is imperative for handing over of possession in accordance with law, however,

the competent authority granted the said occupancy certificate to the respondent only on 07.02.2018.

31. The complainant is estopped by his own acts, conduct, and acquiescence and latched to file the present complaint. That it is further submitted that the complainant had regularly defaulted in making the timely payments of the demands by the respondent and the respondent has time and again sent notices and reminders for the payments of outstanding amounts. It is further submitted that the complainant has deliberately not paid the installment amount against the demands raised by the respondent. The complainant as on date needs to clear the outstanding dues amounting to Rs. 14,81,563/-.

Determination of issues

32. After considering the facts submitted by the complainant, respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:
33. With respect to the **sole issue** raised by the complainant, as per clause 10.1 of the apartment buyer's agreement, the

possession of the unit was to be handed over **within three and half year from the date of this apartment buyer's agreement.** Therefore, the due date of handing over the possession shall be computed from 10.09.2013. Accordingly, the due date of possession was 10.03.2017 and hence, the period of delay in delivery of possession is computed as 2 year, 3 months and 21 days till the date of decision.

34. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. Therefore, as per section 18(1) proviso read with rule 15 of the Rules *ibid*, the complainant is entitled to prescribe rate of interest i.e. State Bank of India highest marginal cost of lending rate plus two percent, per annum. The authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.65% per annum on the amount deposited by the complainant with the promoter from the due

date of possession i.e. **10.03.2017** upto the date of offer of possession.

Findings of the authority

35. **Jurisdiction of the authority-** The project “The Esfera” in Sector 37C, Gurugram, thus the authority has complete territorial jurisdiction to entertain the present complaint. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

36. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in ***Simmi Sikka v/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later

stage.

37. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

38. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

39. Local commissioner report dated 01.07.2019 has been received and the same has been placed on record. The relevant portion of report of the LC is reproduced below :-

- i. The overall progress of the project is approximately 30-35 percent.
- ii. The work progress in complainant's tower D is approximately 40-45 percent.
- iii. The work progress in complainant's unit i.e. D-302 is approximately 45-50 percent.

iv. At present about 10-16 labour force were working on site.

40. As per clause 10.1 of the apartment buyer's agreement dated 10.09.2013 for unit no. 302, tower-D, 3rd floor, in project "The Esfera" Sector 37C, Gurugram, possession was to be handed over to the complainant within period of three and half year from the date of execution of agreement i.e. 10.09.2013 plus 6 months grace period which comes out to be 10.03.2017. However, respondent has not delivered the unit in time. Complainant has already paid Rs. 52,47,600/- to the respondent against a total sale consideration of Rs. 63,16,731/-. As such, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e.10.65% per annum w.e.f 10.03.2017 as per the provision of section 18(1) of the Real Estate (Regulation and Development) act, 2016 till offer of possession.

Decision and directions of the authority

41. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real

Estate (Regulation and Development) Act, 2016 hereby issues the following directions to both parties in the interest of justice and fair play:

- i. The respondent shall be liable to pay interest for every month of delay at prescribed rate i.e. 10.65% p.a. from due date of possession i.e. 10.03.2017 till offer of possession.
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter, the monthly payment of interest till handing over of the possession so accrued shall be paid on or before 10th of subsequent month.
- iii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delay period.
- iv. The promoter shall not charge anything from the complainant which is not part of the ABA.
- v. Interest on the due payments from the complainant shall be charged at the prescribed rate on interest i.e. 10.65%

by the promoter which is the same as is being granted to the complainant in case of delayed possession.

41. The complaint is disposed of accordingly.
42. The order is pronounced.
43. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.07.2019

Judgement uploaded on 04.07.2019



HARERA
GURUGRAM