

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

Complaint no. : 6240 of 2019  
First date of hearing: 18.02.2020  
Date of decision : 23.11.2022

Harjeet Kaur Dhillon

**R/o:** B-82, Seema Apartments, Plot no. 7,  
Sector-11, Dwarka, New Delhi-110075

**Complainant**

Versus

M/s Imperia Structures Ltd.

**Regd. Office at:** - A-25, Mohan Co-operative  
Industrial Estate, New Delhi

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Member**  
**Member**  
**Member**

**APPEARANCE:**

Ms. Gursheen Kaur  
Shri Himanshu Singh

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 10.12.2019 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 allottee 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	"The Esfera" Phase II at sector 37-C, Gurgaon, Haryana
2.	Nature of the project	Group Housing Complex
3.	Project area	17 acres
4.	DTCP license no.	64 of 2011 dated 06.07.2011 valid upto 15.07.2017
5.	Name of license holder	M/s Phonix Datatech Services Pvt Ltd and 4 others
6.	RERA Registered/ not registered	Registered vide no. 352 of 2017 issued on 17.11.2017 up to 31.12.2020
7.	Apartment no.	1004, 10th floor, Block B (page no. 14 of complaint)
8.	Unit measuring	1850 sq. ft. (page no. 14 of complaint)
9.	Date of allotment letter	16.03.2012 [page no. 05 of complaint]
10.	Date of tripartite agreement	25.07.2013 (page no. 28 of reply)
11.	Date of builder buyer agreement	05.11.2013 (page no. 09 of complaint)



12.	Total consideration	Rs. 75, 03,950/- [as per agreement on page no. 18 of complaint] Rs. 78,15,162/- [as per statement of account on page no. 32 of reply]
13.	Total amount paid by the complainant	Rs. 73,37,269/- [as per statement of account on page no. 32 of reply]
14.	Possession clause	<b>10.1. SCHEDULE FOR POSSESSION</b> "The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said building/said apartment within a <b>period of three years and half years from the date of execution of this agreement</b> unless there shall be delay or there shall be failure due to reasons mentioned in clause 11.1, 11.2, 11.3, and clause 41 or due to failure of allottee(s) to pay in time the price of the said unit along with other charges and dues in accordance with the schedule of payments given in annexure C or as per the demands raised by the developer from time to time or any failure on the part of the allottee to abide by all or any of

		the terms or conditions of this agreement.” <b>(emphasis supplied)</b>
15.	Due date of possession	05.05.2017 (calculated as per possession clause)
16.	Offer of possession	Not offered
17.	Occupation certificate	Not yet received for the unit of the complainant as confirmed by the counsel of the respondent during proceedings.

### B. Facts of the complaint

3. That the complainant was allotted a residential apartment in group housing project of the respondent namely 'The Esfera' and was allotted a flat bearing no. B-1004, admeasuring 1850 sq. ft. in tower B at sector-37-C, Gurugram.
4. That the builder buyer agreement was executed between the parties on 05.11.2013.
5. That the total sale consideration for the said unit was fixed for Rs. 78,15,162/- out which complainant has already made a payment of Rs. 73,37,269/- as on 22.06.2017. The complainant had already paid 95% of the payment plan.
6. That as per possession clause the possession of the unit was to be handed over within 42 months from the date of execution of apartment buyers agreement dated 05.11.2013. The due date for handing over of possession comes out to be 05.05.2017.
7. That till today the said unit has not been delivered and the respondent has delayed the project for more than 2 years and failed

to provide possession of the unit. At present no construction is going on the said projects.

8. That the complainant has taken a loan of Rs. 50,00,000/- from the State Bank of India for the payment of consideration amount of the said unit. The complainant has been regularly paying the interest on the loan amount. However, there is no clarity from the respondent for the possession of the said unit.
9. That the complainant time to time had exchanged various communications with the officers of the respondent regarding possession of the unit but the respondent failed to do so. So, the complainant is hereby demanding the refund of her paid up amount.

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

10. The complainant has sought the following relief:
  - **Direct the respondent to refund an amount of Rs. 73,37,269/- along with interest at the rate of 18% from 22.06.2017.**
11. 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.**

12. That the complainant approached the respondent for booking of residential unit in the respondents' project and paid an amount of Rs. 73,37,269/- towards booking.
13. That in the consideration of the booking amount paid by the complainant and her commitments to comply with the terms of the booking/allotment and make timely payments, the respondent



company provisionally allotted the unit bearing no. tower B 1004, 10 floor, admeasuring with of 1850 Sq. ft. in favour of complainant for an agreed cost of Rs 78,61,709/- (including applicable tax) plus other charges.

14. That thereafter respondent company in furtherance of allotment had sent copies of buyer's agreement to the complainant for the execution at their end along with same was executed between the parties.
15. That the construction of the tower's way before the agreed timeline and applied to the competent authority for the application for grant of occupation certificate on 15.04.2021 after complying with all requisite formalities. That the project Esfera of two phases whereas OC of the Phase 1 of the project is duly issued by DTCP, Haryana on 07.02.2018.
16. That the respondent is in extreme financial crunch at this critical juncture and has also been saddled with orders of refund from the authority and NCDRC in the project. The total amount payable in terms of these decrees exceeds an amount of Rs.40 Crores. The said project involves hundreds of allottees and who are eagerly awaiting possession of their apartments will be prejudiced beyond repair in case any monetary order be passed when the project is almost completed now.
17. That, on account of many allottees exiting the project and many other allottees not paying the installment amounts, the company, with great difficulty, in these turbulent times has managed to secure a last mile funding of Rs.99 crores from SWAMIH Investment Fund - I. The said Alternate Investment Fund (AIF) was established under the Special Window declared on 6.11.2019 by



the Hon'ble Finance Minister to provide priority debt financing for the completion of stalled, brownfield, RERA registered residential developments that are in the affordable housing /mid-income category, are net-worth positive and require last mile funding to complete construction. The company was granted a sanction on 23.09.2020 after examination of its status and its subject project "Esfera" for the amount of Rs.99 crores.

18. That the complainant hasn't approached the authority with clean hands and bonafide intentions and that depicts in their action as they haven't paid the instalments on time and still a large portion of amount is still due despite the fact that so many reminders have been sent to them asking for clearance of payment.
19. Copies of all the relevant documents have been filed and placed on the 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 allottee 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;*

*The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.*

**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.

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

**Relief sought by the complainant:** The complainant had sought following relief(s):

- i. **Direct the respondent to refund an amount of Rs. 73,37,269/- along with interest at the rate of 18% from 22.06.2017.**





24. Keeping in view the fact that the allottee complainant wishes to withdraw from the project and 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.
25. The due date of possession as per agreement for sale as mentioned in the table above is 05.05.2017 and there is delay of 2years 7 months 05 days on the date of filing of the complaint.
26. 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.....”*
27. 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. (2021-2022(1) RCR(Civil),357)** 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*
28. 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.
29. 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.

30. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 73,37,269/- with interest at the rate of 10.35% (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*.


**H. Directions of the authority**


31. 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):
- a. The respondent is directed to refund the amount i.e., Rs. 73,37,269/- received by it from the complainant along with interest at the rate of 10.35% 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 amount.
  - b. 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.
  - c. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-




up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of allottee-complainant.

32. Complaint stands disposed of.
33. File be consigned to registry.

  
Sanjeev Kumar Arora  
Member

  
Ashok Sangwan  
Member

  
Vijay Kumar Goyal  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 23.11.2022



**HARERA**  
**GURUGRAM**