

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

Complaint no.: 5762 of 2025
Date of filing: 25.11.2025
Order pronounced on: 17.07.2026

1. Mr. Sagar Narula

2. Mrs. Neha Narula

Both R/o: - A-901, Trimurti Apartments,
Anjuman Cooperative Group Housing
Society, Sector-12 Dwarka, New Delhi-
110078

Complainants

Versus

Imperia Wishfield Pvt. Ltd

Office: - A-25, Mohan Co-operative Industrial
Estate, Mathura Road, New Delhi-110044

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Aakash Kundalwal (Advocate)

Ms. Priya Sharma (Advocate)

Complainants

Respondent

ORDER

1. This complaint has been filed by the complainants/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 thereunder 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.	Particulars	Details
1.	Name and location of the project	"37 th Avenue" at Sector 37-C, Gurgaon, Haryana
2.	Nature of the project	Commercial Complex
3.	Project area	1.175 acres
4.	DTCP license no.	51 of 2012 dated 17.05.2012 valid upto 16.05.2024 (Page 26 of reply)
5.	RERA Registered/ not registered	Not registered
6.	Application form for unit no. 101, Ground floor admeasuring 219 sq. ft. (Not executed by respondent nor any receiving)	16.06.2012 (page 18 of complaint)
7.	Sale consideration of unit no. 101 as per application form	Rs.18,61,500/- (page 16 of complaint)
8.	Confirmation of allotment for unit no. I_018, ground floor	06.05.2013 (page 24 of complaint)
9.	Sale consideration of Unit no. 1_018 as per confirmation letter dated 06.05.2013	Rs.19,38,000/- (Rs.8500/- per sq. ft.) (Page 24 of complaint)
10.	Letter for execution of MoU sent by the respondent for unit no. G-47 in 37 th Avenue	25.01.2017 (page 25 of complaint)
11.	Sale consideration of unit no. G47	Not mentioned
12.	Possession clause	NA
13.	Due date of possession	NA
14.	Amount paid by the complainant	Rs. 14,80,225/- (alleged by complainant on page 10 of the complaint)

15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint.

3. The complainants have made the following submissions: -

- I. That during the course of its business, the respondent launched a commercial project known as "Esfera Elvedor", situated at Sector 37-C, Gurugram, Haryana, India in and about the years 2012-13.
- II. That the complainant vide an application form dated 16.06.2012, applied for allotment of one Commercial Unit bearing No. 101(Unit No. I_018) measuring 228 sq. ft. in 'Tower IBIS' in the project namely 'Esfera Elvedor': In terms of the application form, the complainants were required to remit payments in accordance with a construction linked plan as set out therein.
- III. That at the time of applying for the commercial unit, the complainants were informed that the respondent had the complete right, title and authorization on the project land and also had the requisite sanctions and approvals from the relevant authorities to undertake such construction. It was further informed that the project will be completed within a period of 42 months from the date of booking and the respondent will be handed over possession of the commercial unit in question in the said time period.
- IV. That the complainants on the basis of such representations paid an amount of Rs.1,91,902/- vide cheque dated 19.06.2012. In pursuance to the complainants' application for a commercial unit, the respondent vide welcome letter dated 20.09.2012 acknowledged that the complainant had applied for commercial unit admeasuring 207 sq. ft. and rendered one cheque of Rs.1,91,902/- dated 19.06.2012 towards the same.
- V. That, accordingly, after receiving the abovementioned total amount of Rs.1,91,902/- by the complainants, the respondent had issued a welcome letter dated 20.09.2012 to the complainants acknowledging the receipt of the same.

- VI. That the respondent further issued demand letters on various occasions and the abovementioned demand letters were acknowledged accordingly by the complainants and due payments were made on time as and such demanded by the respondents.
- VII. That initially an allotment letter dated 06.05.2013 for allotment of commercial unit I_018 in Project 'Elvedor Retail' issued by the respondent to the complainants.
- VIII. That upon issuance of allotment letter, the respondent continued to raise several demand letters purportedly as per the stage of construction and the complainant continually paid them.
- IX. That after the allotment of the unit, the complainants on various occasions tried to enquire about the execution of agreement to sell and builder buyer agreement between the complainants and the respondents. Unfortunately, the respondent/ builder dodged the question on every occasion on one pretext or the other.
- X. That after expiry of the stipulated time for handing over possession as per law i.e. by 06.05.2013, when the complainants enquired about the same, the respondent-developer had swayed them away citing one ground or the other for handing over the possession. The complainants were initially allotted Unit No. I_018 admeasuring 228 sq. ft in Tower IBIS, which was further changed by the respondents as per their whim to unit no. G-47 admeasuring 295 sq. feet in Block B within the same project in the year 2017 vide e-mail. Accordingly, the total consideration price was changed from Rs.25,15,772/- to Rs. 31,52,205/- without any prior intimation to the complainants.
- XI. That the respondent builder also issued a letter dated 25.01.2017 to the complainants asking them to read the Memorandum of Understanding enclosed with the letter and sign the same on page number 34 and return the same within 30 days from receipt. The complainants accordingly signed on

the requisite pages and returned the Memorandum of Understanding within due time. However, the complainants received no response from the respondent- builder thereafter. There was no discussion about the MOU from their side after that. That, however, subsequent to receipt of Rs.14,80,225/- out of the total revised consideration price of Rs.31,52,205/-, the respondent did not undertake any construction on the project. The complainant repeatedly requested the respondent to provide status of construction as well as information on the expected date of delivery of the project. However, no response was forthcoming on the part of the respondent.

- XII. That seeing that the project had remained stalled for a long time and upon gaining knowledge that there were several issues with respect to the project in question, the complainants accordingly made several requests to the respondent requesting them for delayed possession charges on the entire amount which the complainant has paid towards the said allotment along with interest, however, the respondent has refused to entertain any legitimate request for refund of amounts and further did not provide any written response to the above requests.
- XIII. That even after expiry of 13 years from the date of booking, till date only a rudimentary structure of one out of the several building forming part of the project has been erected on the project land which is incapable of possession. Additionally, there is no other development on the project land for last two years and the construction activities have been stopped from various years.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- i. Interest for every month of delay at Prevailing rate of Interest: Interest to be calculated @ 9% p.a. on Rs.1,91,902/- from 19.06.2012, on Rs.2,61,565/- from 06.12.2012, on Rs.68,000/- from 21.01.2016, on Rs.1,80,769/- from 06.02.2016, on Rs.88,000/- from 11.09.2017, on Rs.4,00,294/- from 11.09.2017, on Rs.1,39,000/- from 06.07.2018 and on Rs.1,50,668/- from 06.07.2018.

- ii. Direct the respondent/ developer to handover the possession of Commercial Unit No. G-47 in Commercial project 'Tower 37th Avenue' in '37th Avenue' at Sector 37-C, Gurgaon, Haryana with all amenities in habitable condition within time bound manner to the complainants.
5. 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.

6. The respondent contested the complaint on the following grounds: -

- I. That the respondent is both the land owner and the land licensee holder for the said project and it is falsely stated by the complainants that the respondent does not hold any license or required certification for the execution of the said project.
- II. That the respondent company is a duly incorporated entity engaged in the business of real estate development. The present project is one of the company's early ventures, undertaken with the intent to establish a strong foundation in the real estate sector. The respondent has made consistent efforts towards the development and execution of the project in accordance with the applicable laws and policies and has at all times acted in a fair and transparent manner towards the allottees.
- III. That the complainants, after making independent enquiries and only after being fully satisfied about the project, had approached the respondent for booking of a unit in respondent's project 'ELVEDOR RETAIL' located in Sector-37-C, Gurugram, Haryana. The respondent provisionally allotted the unit bearing no. I_018 in favor of the complainants, vide booking form and opted the construction-link plan on the terms and conditions mutually agreed by the complainants and the respondent.
- IV. That after a lapse of a few years, the complainants themselves approached the respondent seeking a change in the originally allotted unit and requested

allotment of a unit with a larger area. Upon the said request, the respondent allotted unit no. G-47 admeasuring 295 sq. ft. Accordingly, vide letter dated 25.01.2017, two copies of the Memorandum of Understanding were forwarded to the complainants for execution. However, despite receiving the same, the complainants failed to return the duly signed MoU's to the respondent. The complainants have not annexed any correspondence or emails to demonstrate that they were actively following up for execution of the MoU, which clearly shows a that the claim being made for execution of the MoU is entirely false.

- V. That the allegation that the unit was arbitrarily and unilaterally changed by the respondent, resulting in an increase in area and sale consideration to Rs. 35,98,250/- is wholly incorrect and misleading. In fact, the request for change of the unit and enhancement in area was made by the complainants themselves. The complainants were fully aware that any increase in area would proportionately result in an increase in the total sale consideration. The complainants, through their own correspondence, have explicitly acknowledged the purchase of the unit in the year 2012 and the payments made in that regard. Having voluntarily sought the change and thereafter failed to comply with their corresponding obligations, the complainants cannot now seek to attribute the consequences of their own request to the respondent.
- VI. That the foundation of the said project rested upon a joint venture arrangement, pursuant to which a Special Purpose Vehicle (SPV) company, namely 'Imperia Wishfield Pvt. Ltd.', i.e., the respondent was created.
- VII. That in lieu of above said understanding & promises, M/s 'Imperia Wishfield Pvt. Ltd.' was incorporated & formed with 4 Directors & 5 shareholders. Mr. Pradeep Sharma, Mr. Avinash Kumar Setia, Mr. Harpreet Singh Batra and Mr. Brajinder Singh Batra.

- VIII. That 3 out of 5 shareholders of the respondent, to the tune of 2500 shares each, amounting to Rs.15,00,000/-.The said Project suffered a huge setback by the act of non-cooperation of M/s Prime IT Solutions Pvt. Ltd., which proved to be detrimental to the progress of the said project as majority of the fund deposited with the above-mentioned project Account by the allottees was under the charge of M/s Prime IT Solutions Pvt. Ltd. and the said fund was later diverted by the M/s Prime IT Solutions Pvt. Ltd, leaving the respondent with nearly no funds to proceed along with the said Project. Further, a case was filed with the title 'M/s Prime IT Solutions Pvt. Ltd. v. Devi Ram and Imperia Wishfield Pvt. Ltd.', pursuant to which a Compromise Deed dated 12.01.2016 was signed between the respondent and M/s Prime IT Solutions Pvt. Ltd. whereby the respondent was left with the sole responsibility to implement the said project.
- IX. That these circumstances caused monetary crunch and other predicaments, leading to delay in implementation of the said project. That several allottees have withheld the remaining payments, which has further severally affected the financial health of the respondent and further, due to the force majeure conditions and circumstances, which were beyond the control of the respondent as mentioned herein below, the construction got delayed in the said project. Both the parties i.e., the complainants as well as the respondent had anticipated, at the very initial stage at the time of booking that some delay might occur in future and that is why under the force majeure, it is duly agreed by the complainants that the respondent shall not be liable to perform any or all of its obligations during the subsistence of any force majeure circumstances and the time period required for performance of its obligations shall inevitably stand extended. It was unequivocally agreed between the complainants and the respondent that the respondent is entitled to extension

of time for delivery of the said flat on account of force majeure circumstances beyond the control of the respondent.

- X. Firstly, owing to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court ordered a ban on construction activities in the region from 04.11.2019 onwards, which was a blow to realty developers in the city. The Air Quality Index (AQI) at the time was running above 900, which is considered severely unsafe for the city dwellers. Following the Central Pollution Control Board (CPCB) declaring the AQI levels as not severe, the SC lifted the ban conditionally on 09.11.2019 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 14.02.2020.
- XI. Secondly, after the complete ban was lifted on 14.02.2020 by the Hon'ble Supreme Court, the Government of India imposed National Lockdown on 24.03.2020 on account of nation-wide pandemic COVID-19, and conditionally unlocked it on 03.05.2020, However, this has left a great impact on the procurement of material and labour. The 40-day lockdown effective since 24.03.2020, extendable up to 03.05.2020 and subsequently to 17.03.2020, led to a reverse migration with workers leaving cities to return back 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 left a great impact on the sector for resuming the fast pace construction for achieving the timely delivery as agreed under the allotment.
- XII. That initially, after obtaining the requisite sanctions and approvals from the concerned Authorities, the respondent 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 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 in huge losses to the respondent.

- XIII. That the respondent is actively taking steps to complete the project and is in the process of arranging the requisite funds and resources for the development and completion thereof. The respondent is making all possible efforts to ensure that the project is completed in accordance with applicable laws and regulations. Further, keeping in view the present financial conditions, scale of the project, and other practical and procedural requirements, the completion of the project may take a period of around three years or more. However, the respondent remains committed to completing the project at the earliest possible time and to safeguarding the interests of all stakeholders.
- XIV. That in view of the relief of possession sought by the complainants, it is submitted that the respondent remains willing and intends to hand over possession of the said unit. However, as stated hereinabove, the completion of the project is contingent upon availability of funds and other practical considerations, and is likely to take approximately three years or more.
- XV. That the complainants are fully conscious of the present status, stage of development, and prevailing circumstances of the project. In the event the complainants choose to continue with the allotment and await possession, the respondent shall proceed in that regard in a spirit of cooperation and mutual understanding, subject to the complainants duly adhering to the payment schedule and fulfilling their contractual and statutory obligations as and

when required. In such circumstances, the continuation of the allotment would necessarily be governed by equitable considerations, and the respondent expects reciprocal cooperation from the complainants, including with respect to any claims pertaining to delayed possession for the said period. The option of refund also continues to remain available to the complainants in accordance with law. However, in case the complainants opt to seek possession, the same shall be subject to completion of the project within the aforesaid timeframe and in compliance with applicable legal provisions.

- XVI. That in its present form, does not take into account the aforesaid factual background, contractual understanding, and prevailing circumstances of the project, which are essential for a fair and equitable adjudication of the issues involved.
- XVII. That the respondent has at all times acted bona fide and in a transparent manner and remains committed to completing the project and complying with all statutory and contractual obligations, subject to the practical constraints and force majeure circumstances.

7. All other averments made in the complainant were denied in toto.

E. Jurisdiction of the Authority.

8. The Authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial Jurisdiction:

9. 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:

10. 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;

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.

11. 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 relief sought by the complainants.

F.I Interest for every month of delay at Prevailing rate of Interest: Interest to be calculated @ 9% p.a. on Rs.1,91,902/- from 19.06.2012, on Rs.2,61,565/- from 06.12.2012, on Rs.68,000/- from 21.01.2016, on Rs.1,80,769/- from 06.02.2016, on Rs.88,000/- from 11.09.2017, on Rs.4,00,294/- from 11.09.2017, on Rs.1,39,000/- from 06.07.2018 and on Rs.1,50,668/- from 06.07.2018.

F.II Direct the respondent/ developer to handover the possession of Commercial Unit no. G-47 in Commercial project 'Tower 37th Avenue' in '37th Avenue' at Sector 37-C, Gurgaon, Haryana with all amenities in habitable condition within time bound manner to the complainants.

12. The complainants have sought delay period interest along with possession of Unit no. G-47 in the respondent's commercial project. Upon consideration of the pleadings, documents placed on record and the submissions of both parties, the Authority observes that the complainants initially applied for booking of a commercial unit vide application form dated 16.06.2012 in the project "Esfera Elvedor", Sector-37C, Gurugram. Thereafter, the respondent issued a confirmation letter dated 06.05.2013 in respect of Unit No. I_018, admeasuring

228 sq. ft., in the project "Elvedor Retail". Subsequently, the respondent issued a letter dated 25.01.2017 forwarding two copies of a Memorandum of Understanding in respect of unit no. G-47 in the project "37th Avenue", requesting the complainants to sign and return the same. The said letter dated 25.01.2017 specifically states that the MoU was being issued pursuant to an allotment letter. The relevant portion of the said letter is reiterated below:

"Sub: Execution of MOU no. G.47 in the project 37th Avenue in Tower 37th situated at Sector 37-C, Gurgaon, Haryana

Dear Customer,

We thank you for investing your trust with us.

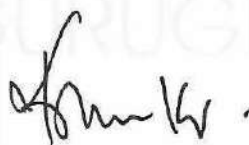
This is further to our allotment letter. In terms of allotment letter we are enclosing two copies of Memorandum of Understanding for your perusal. You are requested to sign both the copies along with stamp papers and Annexure by each allottee on each page and return the same within 30 days from the issue of this letter for execution of agreement. You are also requested to paste 1 photograph of each allottee on page no. 34"

13. However, although the communication dated 25.01.2017 refers to an allotment letter, no such allotment letter has been placed on record by either party. Similarly, no executed Memorandum of Understanding or any Builder Buyer Agreement/agreement for sale relating to unit no. G-47 has been placed on record. Thus, except for the letter forwarding the proposed MoU, there is no document to show that the allotment of unit no. G-47 was ever finalized or that any agreement expressing the rights and obligations of the parties came into existence.

14. It is necessary to determine whether the complainants fall within the definition of an "allottee" under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016, which defines an allottee as a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter. Section 2(d) of the RERA Act, 2016 defines an "allottee" as under:

"...the person to whom a plot, apartment or building...has been allotted, sold...or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment... but does not include a person to whom such plot...is given on rent."

15. This Authority further observes that for a legally enforceable contract to come into existence, there must be consensus ad idem on essential terms such as sale consideration, payment schedule, rights and obligations of the parties which are ordinarily crystallized through an allotment letter and agreement for sale. In the absence of such documents, no concluded contract for sale came into existence between the parties.
16. Since no such document has been placed on record in respect of Unit No. G-47, no concluded contractual relationship can be said to exist between the parties regarding the said unit thereof, they do not satisfy the definition of an allottee under Section 2(d) of the Act.
17. Accordingly, this Authority holds that the complainants does not fall within the definition of "allottee" as defined under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016. Consequently, the present complaint is not maintainable under the provisions of the Act and is accordingly dismissed with a liberty to avail appropriate remedies in accordance with law before the competent forum.
18. Complaint stands disposed of.
19. File be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory
Authority, Gurugram

Dated: 17.07.2026