

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

Complaint No. : 321 of 2018
Date of Institution : 24.05.2018
Date of Decision : 16.11.2018

Ms. Sarjeet Singh, R/o Flat no. 132,
Akshardham Apartments, pocket-3, Sector-
19 Dwarka

...Complainant

Versus

M/s Imperia Structure Ltd having
registered office at: A-25, Mohan Co-
operative Industrial Estate, New Delhi-
110044

...Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Ms Priyanka Agarwal Advocate for the complainant
None Advocate for the respondent



ORDER

1. A complaint dated 24.05.2018 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 Ms. Sarjeet

Singh against the promoter M/s Imperia Structure Ltd. The particulars of the complaint are as under: -

1.	Name and location of the project	"Imperia Esfera", Sector-37C, Gurugram, Haryana.
2.	Project Area	14.939 Acres
3.	DTCP License no.	64 of 2011
4.	Registered/ Not	Registered
5.	Date of Booking	02.11.2011
6.	Unit No.	1702, tower B
7.	Unit Area	1850 sq. ft.
8.	Booking amount	Rs. 5,98,325/-
9.	Basic Sale Price	Rs. 58,33,050/-
10.	Total sale consideration	Rs 78,94,300/-
11.	Total amount paid by the complainant	Rs. 5,83,305/-
12.	Date of builder buyer agreement	<u>NOT EXECUTED</u>
13.	Date of delivery of possession.	<u>Not mentioned</u>
14.	Delay of number of months/ years	Cannot be ascertained
15.	Cancellation of allotment	27.10.2012



2. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 19.07.2018. The case came up for hearing on **19.07.2018**, 30.08.2018 and 07.09.2018. The reply has been filed on behalf of the respondent on 30.08.2018.

FACTS OF THE CASE

3. That on 02.11.2011, the complainant booked a flat in project "Imperia Esfera" in sector 37C, Gurugram admeasuring 1850 sq. ft. and paid provisional booking amount of Rs 5,98,325/-.
4. That the husband of the complainant had severe health problem and after an uncontrolled situation the complainant admitted him in rehabilitation centre in 2016.
5. That during this period when the builder raised demand letter for due instalments, the complainant informed the respondent that she was not in a position to continue with the project due to expenses of studies of child and expenses on husbands medical treatment.
6. That in 2017 the builder called for surrender of all documents of flat in favour of the builder with promise of refunding her booking amount.
7. That the complainant went and surrendered the above stated documents in favour of the builder but the builder denied refunding the booking amount.
8. That till date the complainant has made several requests through emails date 08.05.18, 28.05.18, 07.07.18, 5th 6th 8th 16th 18th December 2017 and 6th 19th January 2018 for refund.



ISSUES RAISED BY THE COMPLAINANT

9. The following issues have been raised by the complainant:
- Whether or not the respondent called the complainant to surrender all documents of flat in favour of builder with promise of refund of her booking amount?
 - Whether the respondent should be further penalized for duping general public of their hard earned money?

RELIEF SOUGHT BY THE COMPLAINANT

10. The complainant has prayed to direct the respondent to refund the booking amount of Rs 5, 98,325/- along with interest.

REPLY BY THE RESPONDENT

11. The respondent submitted that the complainant, despite repeated reminders, failed to make payments as per the payment schedule. Therefore, the respondent had cancelled the said booking as per the terms of the application form.
12. The respondent further submitted that on account of non-payment of the money, the respondent suffered huge loss.



13. The respondent submitted that the said booking was cancelled in 2012 and the amount was forfeited on account of non-compliance by the complainant in terms of the application form.
14. The respondent further stated that the complainant grossly defaulted in adhering to the payment schedule prescribed for making payments towards the said flat.
15. Further the respondent submitted that as per clause 6 of the booking application form dated 02.11.2011 clearly states that in case of default of timely payment as per the payment schedule, the builder shall charge interest @ 18% p.a. on the delayed payment for the period of delay and further it mandates that if there is failure to pay two consecutive instalments or it remains in arrears for more than 30 days then the allotment of the unit stands cancelled without any further intimation to the complainant. Further, 15% of the basic sale price of the said unit shall be forfeited by the respondent
16. The respondent submitted that project is not covered under Haryana real Estate (Regulation and Development) Rules, 2017 nor the project is registered with this Authority. As per rule 2 (o), any project for which an application for occupation



certificate is made to the authority before the publication of the rules, then it is outside the jurisdiction of this authority.

17. The respondent submitted that there is no cause of action to initiate the present complaint as the said unit has been duly cancelled by the respondent vide letter dated 27.10.2012 in accordance with the terms of the application form.
18. The respondent further submitted that the said project is subject to force majeure, which includes delay in project due to reasons beyond the control of the company.

DETERMINATION OF ISSUES:

19. On analyzing the matter, it has been found that an affidavit has been signed by Mr. Sarjeet Singh w.r.t. receipt of payment/settlement of the matter with the respondent company M/s Imperia Structure Ltd. on **25.01.2017**. The complainants are left with no legal rights and interest in the said project thus the issues raised by the complainant become infructuous. At this later stage, in view of the facts and circumstances, case cannot be made out in RERA authority.



FINDINGS OF THE AUTHORITY

20. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to 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.

DECISION AND DIRECTIONS OF THE AUTHORITY:

21. Thus, The Authority exercising power under section 37 of Real Estate (Regulation and Development) Act, 2016 issue directions:

- i. On analyzing the matter, it has been found by the authority that an affidavit has been signed by Mr. Sarjeet Singh w.r.t. receipt of payment/settlement of the matter with the respondent company M/s Imperia Structure Ltd. on **25.01.2017**. At this later stage, in view of the facts and circumstances, case cannot be made out in RERA authority.



22. The order is pronounced.

23. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Date: 16.11.2018



HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

Day and Date	Friday and 16.11.2018
Complaint No.	321/2018 case titled as Ms. Sarjeet Singh Vs. M/s Imperia Structure Ltd.
Complainant	Ms. Sarjeet Singh
Represented through	Ms. Priyanka Agarwal, representative on behalf of the complainant
Respondent	M/s Imperia Structure Ltd.
Respondent Represented through	None for the respondent.
Last date of hearing	13.11.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Arguments heard.

On analyzing the matter, it has been found that an affidavit has been signed by Mr. Sarjeet Singh w.r.t. receipt of payment/settlement of the matter with the respondent-company - M/s Imperia Structure Ltd. on **25.1.2017**.

At this later stage, in view of the facts and circumstances, case cannot be made out in RERA authority. As such, the complaint stands disposed of. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)