



**HARERA**  
GURUGRAM

S; ,HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम

गृह. सिविल लाईंस. गुरुग्राम. हरियाणा

**BEFORE S.C. GOYAL, ADJUDICATING OFFICER,  
HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM**

**Complaint No: 902/2018  
Date of Decision : 05.03.2021**

**Vipul Agarwal S/o Late Anand Prakash  
H No.259, Eldeco Greens Gombi Nagar  
Lucknow-226010**

**Complainant**

**V/s**

**M/s Imperia Structures Ltd.  
A-25, Mohan Cooperative Industrial Estate  
New Delhi-110044**

**Respondent**

**Complaint under Section 31  
of the Real Estate(Regulation  
and Development) Act, 2016**

**Argued by:**

**For Complainant:  
For Respondent:**

**Shri Sushil Yadav Advocate  
Shri Rahul Pandey, Advocate**

**ORDER**

This is a complaint under Section 31 of the Real Estate(Regulation and Development) Act, 2016 (hereinafter referred to Act of 2016) read with rule 29 of the Haryana Real Estate(Regulation and Development) Rules, 2017

Shri Sushil Yadav  
5/3/2021

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY**

Complaint No. 002/2018  
 Date of Decision: 07.03.2018

Yash Agarwal & Associates, Gurgaon  
 W/o 259, Block Green Court Nagar,  
 Indraw-250018

Complainant

vs

M/s. Imperia Structures Ltd.  
 A-32, Mohan Cooperative Industrial Estate,  
 New Delhi-110044

Respondent

Complaint under Section 21  
 of the Real Estate Regulation  
 and Development Act, 2015

Amended by

For Complainant:  
 For Respondent:

Shri. Anil Kumar Advocate  
 Shri. Anil Kumar Advocate

ORDER

This is a complaint under Section 21 of the Real Estate Regulation and Development Act, 2015 (hereinafter referred to as '2015 Act') filed with the Hon. Bench (Real Estate Regulation and Development) under 2015

15/03/18

(hereinafter referred as the Rules of 2017) filed by Shri Vipul Agarwal S/o Late Shri Anand Prakash Agarwal seeking refund of a sum of Rs.75,56,563/- deposited with the respondent against allotment of a residential unit bearing No. E-001, in Tower 'E' measuring 153.34 sq mtrs, in the project of the respondent known as Esfera, situated in sector 37-C, Gurugram for total sale consideration of Rs.1,15,61,250/- on 07.02.2015, besides taxes etc on account of violation of obligations of the respondent/promoter under section 11(4) of the Real Estate(Regulation & Development) Act, 2016. Before taking up the case of the complainant, the reproduction of the following details is must and which are as under:

<b>Project related details</b>		
I.	Name of the project	"THE ESFERA" Sector 37-C, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
<b>Unit related details</b>		
IV.	Unit No. / Plot No.	E-001
V.	Tower No. / Block No.	"E"
VI.	Size of the unit (super area)	Measuring 1650 sq ft
VII.	Size of the unit (carpet area)	-DO-
VIII.	Ratio of carpet area and super area	-DO-
IX.	Category of the unit/ plot	Residential
X.	Date of booking(original)	07.01.2015
XI.	Date of provisional allotment(original)	<b>07.01.2015</b>

Shri c c 5/31/2021

(Investment referred to in clause 10(1) of the said agreement) and the said amount of Rs. 1,00,00,000/- is deposited with the respondent against allotment of a residential plot bearing No. E-001 in Tower 'A' measuring 22.34 sq. meters. In respect of the respondent known as Estate situated in sector 27-C, Gurgaon, Haryana, the respondent has issued a possession order on 07.02.2017, bearing No. E-001 on account of violation of obligations of the respondent under section 11(4) of the Real Estate (Regulation & Development) Act, 2016. Hence, taking up the case of the complainant, the respondent of the following details is true and correct as under:

Project related details

I	Name of the project	THE ESTEEM - Sector 27-C, Gurgaon
II	Location of the project	
III	Nature of the project	Residential
Unit related details		
IV	Unit No. / Plot No.	E-001
V	Tower No. / Block No.	A
VI	Size of the unit (sq. ft.)	Measurement 22.34 sq. ft.
VII	Size of the unit (sq. meters)	22.34
VIII	Ratio of carpet area and super area	75%
IX	Category of the unit	Residential
X	Date of booking/plan	07.02.2017
XI	Date of allotment/original	provisional 07.02.2017

*(Handwritten signature)*

XII	Date of execution of BBA	24.02.2015
XIII	Due date of possession as per BBA	06.01.2018
XIV	Delay in handing over possession till date	More than three years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said clause 18 of BBA	Rs. 5per sq ft of super area
<b>Payment details</b>		
XVI	Total sale consideration	Rs.1,15,61,250/-
XVII	Total amount paid by the complainants	Rs.75,56,563/-

2. Brief facts of the case can be detailed as under:


A project known by the name of "The Esfera" situated in Sector 37-C, Gurugram was to be developed by the respondent. The complainant coming to know of the same approached the respondent on 07.01.2015 and booked a unit detailed above for a total sale consideration of Rs.1,15,61,250/- and paid a sum of Rs.5,78,063/-. This led to allotment of unit bearing No.E-001 in Tower E of the above mentioned project by the respondent. A Builder Buyer Agreement Annexure C/4 was executed between the parties on 24.02.2015. It is the case of the complainant that in order to pay the amount towards allotment of the unit he also raised loan from the Tata Capital Housing Finance Ltd on 24.02.2015 and took a sum of Rs.69.78,500/- and deposited with it the respondent. Thus, in all, the complainant deposited a sum of Rs.75,56,653/- with the respondent upto 24.02.2015. This fact was also admitted by the respondent vide statement of account Annexure C/6. The due date for handing over possession of the allotted unit was fixed

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XII	Date of execution of BSA	24.02.2018
XIII	Due date of possession by the BSA	05.01.2018
XIV	Delay in handing over possession till date	More than 100 days
XV	Penalty to be paid by the Respondent in case of delay in handing over possession as per the said clause 18 of BSA	Rs. 1500/- per day
Payment details		
XVI	Total sale consideration	Rs. 1500/-
XVII	Total amount paid by the BSA	Rs. 1500/-

**2. Brief facts of the case are detailed as follows:**

A project known by the name of 'The Park' located in Sector 37-C Gurgaon was to be developed by the respondent. The construction started to know of the same approached the respondent on 07.01.2015 and asked a unit detailed above for a total sale consideration of Rs. 15,00,000/- and paid a sum of Rs. 2,78,000/-. This led to a purchase agreement dated 08.01.2015 at Tower B of the above mentioned project by the respondent as a Buyer. Annexure - Agreement - Annexure C-1 was executed between the parties on 24.02.2018. It is the case of the complainant that in order to get the original documents allotment of the unit for which he had paid Rs. 15,00,000/- and Home Finance Ltd on 24.02.2018 and took a sum of Rs. 2,78,000/- and deposited with it the respondent. That in all, the complainant deposited a sum of Rs. 2,78,000/- with the respondent who on 24.02.2018 the complainant also advised by the respondent the statement of account showing the unit for handing over possession of the unit to the complainant.

  
 24.02.2018  
 1505/18-7

including grace period of six months as per clause 10.1 of the BBA as **23.02.2018**. It is the case of the complainant though the respondent promised to pay Pre-EMIs of loan amount raised by him from Tata Capital Housing Finance Ltd. but the same was never paid. Rather, he was informed by the respondent vide email dated 23.05.2017 that the pre-EMIs be paid by the complainant and the same would be re-imbursed by it. Though, some pre-EMIs were paid but the same were never paid after March-2017. A number of emails Annexure A/9 were written to the respondent but with no positive result. So, it led to giving of notice to the respondent on 01.012.2017 demanding refund of interest on Pre-EMIs of the amount deposited as Annexure 10 but without any positive result. A number of emails were also exchanged between the parties as is evident from Annexure 11 but without any positive result. So, in this way, the respondent failed to complete the project and offer possession of the allotted unit to the complainant and abandoned the same. So, on these broad averments, he filed the complaint seeking refund of the amount deposited with the respondent besides interest and compensation

3. But the case of the respondent as set up in the written reply is that the complainant was allotted the unit in question and he paid different amounts against the said allotment. However, due to certain force majeure circumstances, the construction of the project could not be completed. Moreover, after the completion of the construction, the respondent successfully delivered possession of 9 towers in the same project. The tower of the allotted unit 'E' is located in phase II and every effort is being made to complete its construction and hand over its possession by May, 2021. It was denied that the project has been abandoned and there is no progress of construction at the spot. In fact, despite number of hardships, the respondent is proceeding with the construction and the same is going to be

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including grace period of six months as per clause 10.7 of the DBA as  
13.02.2018. It is the case of the complainant through the respondent  
granted to pay 1% EMI of loan amount stated in the Form 1 of capital  
financing form. The complainant received the same on 13.02.2018 but the  
by the respondent vide email dated 23.02.2017 that the pay EMIs be paid by  
the complainant and the same would be re-invested by 13.02.2017. A  
pay-EMIs were paid but the same were never paid after 13.02.2017. A  
number of emails from complainant were written to the respondent but with no  
positive result. So, it led to giving notice to the respondent on 01.02.2017  
demanding refund of interest on the EMIs of the amount deposited in  
Answer 10 but without any positive result. A number of emails were also  
exchanged between the parties as is evident from Answer 11 but without  
any positive result. So in this way the respondent failed to complete the  
project and offer possession of the allotted unit to the complainant and  
abandoned the same. So, on these broad grounds, the complainant  
seeking refund of the amount deposited with the respondent besides  
interest and compensation.

3. But the case of the respondent is set-up but the right title is that  
the complainant was allowed the unit in question and he paid all the  
amounts against the said allotment. However, due to certain facts and  
circumstances, the construction of the project could not be completed.  
Moreover, after the completion of the construction, the respondent  
successfully delivered possession of 5 units in the same project. The town  
of the allotted unit 2 is located in phase II and 4 other units are located in  
complete its construction and hand over its possession by 13.02.2017. It was  
denied that the project has been abandoned and there is no progress in  
construction of the site. In fact, despite number of emails from the  
respondent is directed towards the complainant and the same could be

23.02.2018  
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completed very soon. Moreover, if a refund at this stage is allowed, then it may be detrimental for the health of the project and which may collapse at any time. Lastly, it was pleaded that a number of allottees are eagerly waiting for the possession of their apartments in the project in which the claimant is one of the allottee. So, if refund is allowed, then that will not be in the interest of the project. The respondent managed to secure a loan amount of Rs.99 crores from the Swami Investment Fund and that amount has been pumped to complete the project and hand over its possession to the complainant and various other allottees very soon.

4. I have heard the learned counsel for the parties and have perused the case file.

5. Some of the admitted facts of the case are that on the basis of an application Annexure 2, the complainant was allotted a unit bearing No.E-001 in Tower E of the project "The Esfera" situated in Sector 37-C, Gurugram by the respondent for a sum of Rs. Rs.1,15,61,250/-. The complainant paid booking amount of Rs.5,78,063/- on the same day. He also arranged a loan of Rs.69,78,500/- from Tata Capital Housing Finance Ltd on 24.02.2015 and deposited that amount with the respondent. So, in this way he paid a sum of Rs.75,56,563/- in all to the respondent upto 24.02.2015 against the total sale price of Rs.1,15,61,250/-. A BBA dated 24.02.2015 Annexure R/4 was executed between the parties and as per clause 10.1 the due date for completion of the project and handing over possession of the allotted unit was 42 months inclusive of six months grace period and the same is being reproduced as under:

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considered very poor. Moreover, I found at this stage as follows: that it may be detrimental for the health of the project and which may consequently say that I feel. It was headed that a number of similar one agency waiting for the possession of their investments in the project in which the claimant is one of the parties. It should be noted that the claimant is in the interest of the project. The respondent arranged to receive a sum amount of Rs 99 crore from the Special Investment Fund and that amount has been proposed to complete the project and handover the possession to the claimant and various other related matters.

I have heard the learned counsel for the parties and have passed the order as follows:

In view of the admitted facts of the case and the fact that the party of the application Annexure 2, the respondent was allowed a time period of Rs 100 crore of the project. The order stands in terms of the application and by the respondent for a sum of Rs 11,54,13,00,000. The respondent paid a sum of Rs 5,75,00,00,000 on the same day. He also arranged to pay of Rs 9,78,20,00,000 from Tata Capital Housing Finance Ltd on 24.07.2017 and deposited that amount with the respondent. In this way, he had a sum of Rs 15,50,00,00,000 in all for the respondent up to 24.07.2017. Against the total sale price of Rs 11,54,13,00,000, a sum of Rs 5,75,00,00,000 was received between the parties and subject to the date of completion of the project and handing over possession of the project and was 45 months inclusive of six months grace period and the same is being

21/11/2017  
2/11/2017

### 10.1. SCHEDULE FOR POSSESSION OF THE SAID APARTMENT

*The Developer/Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said build/said apartment within a period of three and half years from the date of execution of this Agreement 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 intending Allottee(s) to pay in time the price of said Apartment alongwith other charges and dues in accordance with the schedule of payments given in Annexure F or as per the demands raised by the Developer/company from time to time or any failure on the part of the intending Allottee(s) to abide by all or any of the terms or conditions of this Agreement.*

6. It is evident from a perusal of above mentioned clause of BBA that possession of the allotted unit was to be delivered to the complainant by the respondent by 25.08.2018. However, there is nothing on record to show that either the construction of the project is going at what pace and what is the stage of construction. The complainant placed on file photographs of the site i.e. incomplete structure at the spot. The best evidence in this regard would have been that some quarterly progress report filed with the Hon'ble Authority or some other authority showing the stage and extent of construction. Even no effort was made in this regard. Though it is pleaded in the written statement that the construction of the project could not be completed due to force majeure factors beyond its control. But neither any evidence in this regard has been led nor there is nothing any circumstance to prove that fact. No doubt, the respondent completed construction of 9 other towers in the project and offered their possession after receiving occupation certificate but there is nothing on record to show about the stage and extent of construction of the project in which the unit of the complainant is located. The respondent might be successful in taking loan of Rs.99 crore from Swami Investment Fund managed by the Government of India to complete the project but the complainant can not be asked to wait indefinitely for offer of possession of the allotted unit. The complaint

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NO. 1 SCHEDULE FOR RESERVATION OF THE SUB CONTRACT

The Developer/Company shall be liable for all the expenses incurred by the contractor in connection with the execution of this agreement. The contractor shall be liable for all the expenses incurred by the contractor in connection with the execution of this agreement. The contractor shall be liable for all the expenses incurred by the contractor in connection with the execution of this agreement.

It is evident from a perusal of above mentioned clause of the contract that possession of the site was to be delivered to the contractor by the respondent by 22.08.2018. However, since the respondent failed to deliver the site to the contractor by the stipulated date, the contractor has been forced to stop the work at the site. The contractor has been forced to stop the work at the site. The contractor has been forced to stop the work at the site. The contractor has been forced to stop the work at the site.

21/12/2018  
21/12/2018

seeking refund of the amount deposited with the respondent was filed on 21.01.2019 and upto 24.02.2015, the complainant had deposited a total sum of Rs.75,56,563/- with the respondent. He cannot be asked to wait indefinitely for delivery of possession of the allotted unit and which ultimately led to withdrawal after the due date for completion of the project has expired. A reference in this regard may be made to the letters(copies) Annexure P/7 dated 02.04.2015, 06.04.2015 respectively. Even the complainant send emails to the respondent as is evident from Annexure E/9. So, the complainant withdrew from the project by giving notice dated 01.12.2017 as Annexure-10 and filed a complaint seeking refund. A reference to emails attached Annexure A/11, A/12 may also be given. When nothing materialised, the complainant withdrew from the project by issuing notice Annexure -13 dated 24.02.2018. So, in such a situation when the respondent was unable to complete the project and offer possession of the allotted unit to the complainant, then as per provision 18 of Real Estate(Regulation and Development) Act,2016,he was entitled to withdraw from the project. Moreover, after passage of more three years, there is nothing on record as to what is the stage of construction and when the project is going to be completed. In case of **Ireo Grace Real Tech Pvt Ltd. Vs Abhishek Khanna & Others, Civil Appeal No. 5785 of 2019** decided on 11.01.2021, the Hon'ble Apex Court allowed the refund of the amount deposited by the allottees with the developer besides interest at the rate of 9% p.a. when it was proved that there was delay in handing over the possession of the allotted unit. So, taking into consideration all these facts, it is evident that when the complainant withdrew from the project, then he is legally entitled to seek refund of the amount deposited with the respondent besides interest and compensation.

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to seek return of the amount deposited with the respondent with interest  
and compensation.

The respondent has deposited with the respondent with interest  
and compensation the amount of Rs. 25,50,000/- with the respondent. The amount is to be paid  
immediately for delivery of possession of the plot and the respondent  
immediately to withdraw from the plot and the respondent to the plot  
has entered a release in this regard. It may be noted that the respondent  
Annexure P-7 dated 02.04.2012, dated 02.04.2012, respondent from the  
complaint, seek return of the amount deposited with the respondent  
P-7. The complaint withdraws from the plot and the respondent  
02.04.2012 as Annexure-10 and the respondent seeking return of the amount  
to annals attached Annexure A-11. It may be noted that the respondent  
protested, the complainant withdraws from the plot and the respondent  
Annexure-12 dated 24.03.2018 to request a situation where the respondent  
was unable to complete the project and other possession of the plot and  
to the complainant. It is as per provision 13 of the Real Estate Regulation and  
Development Act, 2016, he was entitled to withdraw from the project  
however after passage of more than three years. It is submitted that the  
to what is the stage of construction and when the project is ready to be  
completed in case of two floors. The respondent has not submitted  
to Others Civil Appeal No. 2755 of 2019 dated 02.11.2019. The  
but the Apex Court allowed the return of the amount deposited with the  
along with the developer. Besides interest at the rate of 12% per annum it  
was proved that they were ready to hand over the possession of the  
allowed and so, taking into consideration all these factors it is held that  
where the complainant withdraws from the plot and the respondent  
to seek return of the amount deposited with the respondent with interest

and compensation.

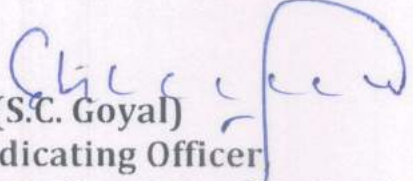
*[Handwritten signature]*

7. Thus, in view of my discussion above, the complaint filed by the complainant is hereby ordered to be accepted. Consequently, the following directions are hereby ordered to be issued to the respondent:

i) To refund the entire amount of Rs.75,56,563/- besides interest at the prescribed rate i.e. 9.30% p.a. from the date of each payment till the date on which the full refund alongwith compensation in the form of interest in terms of this order ~~is~~<sup>be</sup> paid to the complainant and failing which legal consequences would follow.

8. File be consigned to the Registry.

05.03.2021

  
(S.C. Goyal)  
Adjudicating Officer  
Haryana Real Estate Regulatory Authority  
Gurugram  
5/3/2021

These in view of my examination show the computer files on the complainant's floppy disk to be correct. Consequently the following directions are hereby ordered to be issued to the respondent:

To refund the entire amount of Rs 75,000/- within 15 days of the prescribed date. The respondent is directed to deposit the entire amount in the account of the complainant in the name of the complainant and to pay the interest in terms of this order. In the event of any default in the above which legal consequences would follow.

This is ordered to the rights.

  
Advocate  
Harvard Road Estate Registrar  
Gurgaon  
12/12/2011

12/12/2011