



**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**

**Complaint N.1440/2018)  
Date of Decision: 05.03.2021**

**Harpal Singh Takhar S/o Sh. Darshan Singh  
H No.P-17, Dinshaw Irani Road,  
Ahmad Nagar Cantt, Maharashtra-414001**

**Vs**

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

**Respondent**

**II**

**Complaint Case N.513/2019)  
Date of Decision: 05.03.2021**

**Ms Babita  
1008,Ward No.7 Mehrauli,  
New Delhi-110030**

**Vs**

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

**Respondent**

*Slc - 5/3/2021*

III

Complaint Case No.515/2019  
Date of Decision: 05.03.2021

Ajay Kumar Pasricha S/o Shri Sohan Lal Pasricha  
Plot No.71, Ist Floor,  
Sector 12-A, Dwarka, New Delhi-110075

Vs

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

Respondent

IV

Complaint No.520/2019)  
Date of Decision: 05.03.2021

Ajay Kumar Pasricha(Karta of  
A K. Pasricha & Sons(HUF)  
Plot No.71, Ist Floor,  
Sector 12-A, Dwarka, New Delhi-110075

Vs

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

Respondent

V

Complaint Case No.648/2019  
Date of Decision: 05.03.2021

Amar Prakash Goel  
817/6, Mehrauli,  
New Delhi-110030

Complainant

V/s

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

Respondent

Shri c c s f 5/3/2021

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

**Argued by:**

**For Complainants:**

**Shri Prikshit Kumar, Advocate**

**For Respondent:**

**Shri Rahul Pandey, Advocate**

**ORDER**

This common order of mine seeks to dispose of above mentioned five complaints filed by the complainants named above seeking refund of deposited amount of Rs.8,66,188/-, Rs.6,03,404/-, Rs.7,08,415/- Rs.7,01,796/- and Rs.13,71,902/-respectively besides interest and compensation from the respondent-builder.

2. The above mentioned complaints<sup>were</sup> filed 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 (hereinafter referred as the Rules of 2017) by Shri Harpal Singh, Ms Babita, Ajay Kumar Pasricha, Ajay Kumar Pasricha Karta of A K Pasricha & Sons, HUF and Amar Prakash Goel seeking refund of amount as mentioned in their respective tabulated form below deposited with the respondent-company against booking of commercial units in the project known as "Elvedor Retail" situated in Sector 37-C, 37 Avenue, Gurugram besides taxes etc on account of violation of obligations on the part of the respondent/promoter under section 11(4) of the Real Estate(Regulation & Development) Act, 2016. Before taking up the case of

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the complainants, the reproduction of the following details is must and which are as under:

Project related details Complaint No.1440 of 2018		
I.	Name of the project	"Elvedor Retail" Sector 37-C Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Commercial
<b>Unit related details</b>		
IV.	Unit No. / Plot No.	11-A12, Tower Evita 11 <sup>th</sup> floor
V.	Tower No. / Block No.	
VI	Size of the unit (super area)	Measuring 659 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	Commercial
X	Date of booking(original)	22.10.2012 ✓
XI	Date of provisional allotment(original)	15.03.2013
XII	Date of execution of BBA	
XIII	Due date of possession as per BBA	
XIV	Delay in handing over possession till date	
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	

Payment details

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XVI	Total sale consideration	Rs. 44,34,974
XVII	Total amount paid by the complainants	Rs.8,66,188/-

II

<b>Project related details Complaint No.513 of 2019</b>		
I.	Name of the project	"ELVEDOR RETAIL " Sector 37-C Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Commercial
<b>Unit related details</b>		
IV.	Unit No. / Plot No.	IR_003 ground floor
V.	Tower No. / Block No.	
VI.	Size of the unit (super area)	Measuring 189/196 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	Commercial
X.	Date of booking(original)	<b>07.09.2012</b>
XI.	Date of provisional allotment(original)	07.05.2013
XII.	Date of execution of BBA (copy of BBA be enclosed as annexure-B)	
XIII.	Due date of possession as per BBA	

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XIV	Delay in handing over possession till date	
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	
<b>Payment details</b>		
XVI	Total sale consideration	Rs. 22,95,104/-
XVII	Total amount paid by the complainants	Rs.6,03,404/-

III

<b>Project related details Complaint No.515 of 2019</b>		
I.	Name of the project	"ELVEDOR RETAIL" Sector 37-C Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Commercial
<b>Unit related details</b>		
IV.	Unit No. / Plot No.	G-75 GF 37 Avenue
V.	Tower No. / Block No.	
VI.	Size of the unit (super area)	Measuring 190 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	Commercial
X.	Date of booking(original)	27.07.2012

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XI	Date of provisional allotment(original)	07.05.2013
XII	Date of execution of BBA	
XIII	Due date of possession as per BBA	
XIV	Delay in handing over possession till date	
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	
<b>Payment details</b>		
XVI	Total sale consideration	Rs. 26,32,520/-
XVII	Total amount paid by the complainants	Rs.7,08,415/-

IV

<b>Project related details Complaint No.520 of 2019</b>		
I.	Name of the project	"ELVEDOR RETAIL" Sector 37-C Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Commercial
<b>Unit related details</b>		
IV.	Unit No. / Plot No.	G-26, 37 Avenue
V.	Tower No. / Block No.	
VI	Size of the unit (super area)	Measuring 228 sq ft
VII	Size of the unit (carpet area)	-DO-

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VIII	Ratio of carpet area and super area	-DO-
IX	Category of the unit/ plot	Commercial
X	Date of booking(original)	25.07.2012
XI	Date of provisional allotment(original)	07.05.2013
XII	Date of execution of BBA	
XIII	Due date of possession as per BBA	
XIV	Delay in handing over possession till date	
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	

**Payment details**

XVI	Total sale consideration	Rs. 26,12,672/-
XVII	Total amount paid by the complainants	Rs.7,01,796/-

V

**Project related details Complaint No.648 of 2019**

I.	Name of the project	"ELVEDOR RETAIL" Sector 37-C Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Commercial

**Unit related details**

IV.	Unit No. / Plot No.	G-52 GF 37 Avenue
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V.	Tower No. / Block No.	
VI	Size of the unit (super area)	Measuring 421/328 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	Commercial
X	Date of booking(original)	09.11.2012
XI	Date of provisional allotment(original)	10.01.2013
XII	Date of execution of BBA	
XIII	Due date of possession as per BBA	
XIV	Delay in handing over possession till date	
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	
<b>Payment details</b>		
XVI	Total sale consideration	Rs. 38,58,400/-
XVII	Total amount paid by the complainants	Rs.13,71,902/-

3. Brief facts of the case as mentioned in the above tabulated form for deciding the controversy in question are that the project known by the name of "ELEDOR RETAIL" situated in Sector 37-C. Gurugram was to be developed by the respondent. The complainants coming to know about that project booked commercial units detailed above for total sale consideration of Rs.44,34,974, Rs.22,95,104/-, Rs.26,32,520/-, Rs.26,12,672/- and 38,58,400/- and paid an amount of Rs.8,66,188/-, Rs.6,03,404/-

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Rs.7,08,415/-Rs.7,01,796/- and Rs.13,71,902/- respectively. No Builder Buyer Agreement in respect of the allotted commercial units was ever executed between the parties. It is the case of the complainants that the respondent kept changing their allotted units as well as changing the measurement and sale price unilaterally. A number of visits were made by the complainants at the site but could not get any satisfactory reply from the respondent side. When the respondent was unable to complete the project and offer possession of the allotted units, then the complainants filed the above mentioned complaints against the respondent seeking refund of the amount deposited with it besides interest and other charges.

4. But the case of the respondent-builder as set up in the separate written replies is otherwise and who took a plea that though the complainants were allotted commercial units but the construction of the same is likely to be completed within a year. It was denied that the project is not near completion and the same has been abandoned. In fact, more than 50% of the construction of the project is complete and the same is being funded by the Central Government. It was denied that all the allottees were regular in making timely payments. In fact, they committed default in making payments leading to delay in the completion of the project. It was denied that the complainants are entitled to seek refund of the amount deposited with it besides interest and compensation as alleged by them.

6. I have heard the learned counsel for both the parties and who reiterated their position as stated above.

7. Admittedly, the complainants booked commercial units in the project of the respondent known as 'Elvedor Retail',

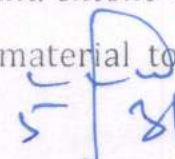
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situated in Sector 37-C, Gurugram and paid different amounts at different times. They were issued provisional allotment letters with regard to their respective units and started depositing various amounts later on. It is the case of the complainants that the project is unlikely to see the light of the day as the same has been abandoned. Though while filing the written reply, it is pleaded by the respondent that the work of the project is going on in full swing but that is against the record and is belied by the various orders passed by the Hon'ble Authority. A reference in this regard may be made to the order dated 01.03.2019 passed by the Hon'ble Authority in one of the case of an allottee namely Ms Babita and which may be reproduced as under:

*Complainant had booked a commercial unit No.IR-003, ground floor, tower Iris in project "Elvedor Retail" Sector 37C, Gurugram and paid an amount of Rs.6,03,404/- to the respondent. However, later on, on 05.08.2016, the complainant received a provisional allotment of unit No.G-74 admeasuring 175 sq ft alongwith change of project name as 37<sup>th</sup> Avenue in the same locality and the committed date of delivery of the booked space was given as 6.5.2018. As per report of LC convened in similarly situated matters, only 5% of the project is complete which is a dismal state of affairs.*

*Taking into account of report of LC and physically progress of the work at site, the Authority is of the considered opinion that the project is not likely to see the light of the day and there is no hope and scope to get the project completed, there is no option with the Authority but to order refund the amount from the date of original payment alongwith interest at the rate of 10.70% per annum within a period of 90 days from the date of issuance of this order.*

8. It is pleaded on behalf of the respondent that the construction of the project is going on well and more than 50% of the work at the site is complete. However, neither any quarterly progress report to show the status and extent of the construction has been placed on the file nor there is any material to show the pace and extent of construction at the site. The

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best evidence in this regard would have been of filing of an affidavit of a responsible person connected with the construction activities alongwith photographs. But no such effort was made in this regard. So, the plea of the respondent with regard to construction of the project going on at a fast speed cannot be taken into consideration and is just a ploy to defeat the claim of the claimants.

9. It is proved that the project has been abandoned and there is nothing on record to show that it has been revived at all. So, in such a situation, the respondent has failed to complete the project and offer possession of the allotted units to the complainants by the due date or within reasonable time from the date of booking. In case of **Fortune Infrastructure & Anr Vs Trevor D'lima & Ors, 2018(5) SCC 442**, the Hon'ble Supreme Court held that a person cannot be allowed to wait indefinitely for possession of the flat allotted to him and is entitled to seek refund of the amount paid by him alongwith compensation. Moreover when no date of possession is mentioned in the agreement, then the promoter is expected to handover the same within a reasonable time and the period of 3 years was held to be reasonable time. So, in such a situation, the claimants are entitled to refund of the amount deposited with the respondent-builder besides interest and compensation.

9. Thus, in view of my discussion above, the complaints filed by the complainants are hereby ordered to be accepted. Consequently, the respondent is directed to refund the entire amount received from the respective complainants from each date of payment alongwith interest @ 9.30p.a. within a period of 90 days failing which legal consequences would follow. The details of the amount deposited by the complainants with the respondent-builder for booking of commercial units are as under:

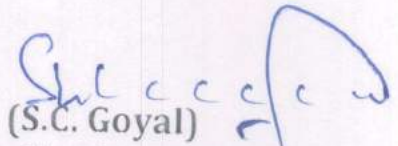
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I. Harpal Singh	Rs.8,66,188/-
II. Ms Babita	Rs.6,03,404/-
III. Ajay Kumar Pasricha	Rs.7,08,415/-
IV. Ajay Kumar Pasricha(Karta of A K. Pasricha & Sons(HUF)	Rs.7,01,796/-
V. Amar Prakash Goel	Rs.13,71,902/-

10. A copy of this order be placed in the respective files.

11. File be consigned to the Registry.

05.03.2021

  
(S.C. Goyal)  
Adjudicating Officer,

Haryana Real Estate Regulatory Authority  
Gurugram 5/3/2021