



HARERA
GURUGRAM

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 No: 3099/6268/2019
Date of Decision : 10.03.2021**

**Col(Retd) Jasbir Singh Batth
H. No.15, Kukru Fort near
Healing Touch Hospital, Ambala
Haryana**

Complainant

V/s

**M/s Imperia Wishfield Pvt. 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 Ramit Rana, Advocate
Shri Rahul Pandey, Advocate**

ORDER

The above mentioned complaint preferred 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 Col(Retd) Jasbir Singh Batth seeking refund of amount of Rs.7,73,500/- deposited with the respondent-company against booking of a commercial unit in the project known as "Elvedor Retail" situated in Sector 37-C, Gurugram besides taxes etc on account of

Shri c c c
10/3/2021

violation of obligations of the respondents/promoters 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:

Project related details		
I.	Name of the project	"Esfera Elvedor" Sector 37-C Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Commercial
Unit related details		
IV.	Unit No. / Plot No.	IR_113 First floor
V.	Tower No. / Block No.	
VI.	Size of the unit (super area)	Measuring 364 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)	12.12.2012
XI.	Date of provisional allotment(original)	25.06.2014
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
 Shri C 10/21/2021 2

XVI	Total sale consideration	Rs.37,04,999/-
XVII	Total amount paid by the complainants	Rs.7,73,500/-

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

A project known by the name of "ELEDOR RETAIL" situated in Sector 37-C, Gurugram was to be developed by the respondent. The complainant coming to know about the same booked a commercial unit in it by moving an application P/2 for a sum of Rs.37,04,999/- on the basis of brochure P/1. It is the case of the complainant that after getting a provisional allotment letter vide P/8 he started depositing various amounts and paid a total sum of Rs.7,73,500/- upto 12.12.2013. No due date for offer of possession of the allotted unit was fixed. However, it was promised verbally by the respondent that the possession of the allotted unit would be delivered to the complainant by December, 2015. No BBA in respect of the allotted commercial unit was ever executed between the parties. Despite a passage of more than five years from the date of allotment i.e. 25.06.2014, the respondent failed to complete construction and to offer possession of the allotted unit. Even otherwise keeping in view the pace of construction at the spot, the complainant was not ready to continue with the project and wrote a number of emails on 12.02.2015, 10.07.2015 and withdrew from the project and sought refund of the amount deposited with the respondent. But despite that nothing materialised and which led to filing of the complaint seeking refund of the above mentioned amount on 06.12.2019.

3. But the case of the respondent as set up in the written reply is otherwise and who took a plea that though the complainant booked a commercial a unit for a sum of Rs.37,04,999/- on 12.01.2012 but paid only a sum of RS.7,73,500/- i.e. 20% of the total sale consideration. A number of reminders were issued to him to make payment but without any positive result. It was admitted that the construction of the project

Shri C. C. 10/3/2021 3

could not be completed due to certain circumstances beyond its control. Moreover, the complainant is an investor and is not entitled to seek refund of the deposited amount. Lastly, it was pleaded that the complainant is bound by the terms and conditions of allotment and if refund is allowed, then it would be detrimental to the interest of the project as well as other allottees.

4. All other averments made in the complaint were denied in toto.

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

6. Some of the admitted facts of the case are that on 12.12.2012, the complainant booked the above mentioned commercial unit with the respondent for a sum of Rs. Rs.37,04,999/-. In pursuant to that he was allotted the above mentioned commercial unit on 25.06.2014 vide Annexure P/4. Though no builder buyer agreement was executed between the parties but in pursuance to allotment, the complainant deposited a total sum of Rs.7,73,500/- upto 12.01.2013. The project, namely, 'ELVEDOR RETAIL' in which the commercial unit was allotted to the complainant was to be constructed under the construction linked payment plan. It is the case of the complainant that since there was no construction at the site, so, he withdrew from the project and sought refund of the amount deposited with the respondent. In this regard, a reference has been made to emails dated 05.10.2013, 08.10.2013, 07.02.2015, 27.04.2019 and 02.04.2019 as Annexures P/6 to P/10 respectively. A perusal of the above mentioned communications shows that though some of them deal with regard to change of correspondence address of the complainant but vide email dated 27.04.2019, the complainant opted out from the project and sought refund. A reference to Email dated 02.05.2019 sent by the complainant to the respondent may be made and which may be reproduced as under:

Dear Sir,

1. I had booked a unit measuring 333 sq ft in ELVEDOR RETAIL ON 12 Dec 2012 and you had provisionally allotted IWF-R-0482 vide your letter dt.25/06/2015.

2. Booking amount of Rs.3,18,960/- was paid at the time of booking vide cheque No.119746 Dt 12 Dec 2012 of ICICI BANK(Receipt No.0973) and another payment of

She C C
10/3/2021

Rs.4,54,540/- was paid vide cheque No.119747 of ICICI BANK Dt 12 Jan 2013(Receipt No.1044).

3. I have contacted you many times on your Customer care no and in person to send me Builder Buyer Agreement and intimate the progress of the project.
4. However, at the time of booking it was intimated that possession will be given within 36 months as is the norm but even after contacting you personally and telephonically no intimation is being given about the project and the builder buyer agreement.
5. In view of the above even after more than 6 and half years no intimation of builder buyer agreement and no intimation of the progress of the project. I would to withdraw from the above project.
6. May I request you to refund my entire money alongwith interest at the earliest.
7. You are also requested to send all correspondence at my permanent address as given in the application form.

Thanking you in anticipation.

Yours sincerely,
COL Jasbir Singh Batth
Mob. 8894334115
H No. KAKRU FORT VPO KAKRU
AMBALA CITY HARYANA 134003

7. A perusal of the above mentioned document placed on the file shows that though the complainant booked the above mentioned commercial unit under the construction linked payment plan but it was also the duty of the respondent to inform the allottee about the progress of the project and its likely completion within the due date of booking of the unit. A provisional allotment was made in the year 2014 i.e. 25.05.2014. Though no date for completion of the project was fixed but reasonably, it should have been within three years from the date of allotment i.e. 17.12.2012. There is nothing on record to show the stage and extent of construction of the allotted unit within three years. No doubt, the complainant did not deposit any amount except paying a sum of Rs.7,73,500/- out of total sale consideration of Rs. Rs.37,04,999/- but it was the duty of the respondent to inform the allottee about the stage and extent of construction. When nothing materialised, then after the due date, the complainant withdrew from the project by writing email dated 27.04.2019

followed by another mail dated 02.05.2019. Though these emails were responded

Shlc
10/8/2021

vide communications dated 27.04.2018 and 19.05.2019 but issues raised by the complainant were not answered. So, in such a situation, the plea of the respondent-builder that the construction of the project could not be completed due to certain circumstances beyond its control is untenable. It is well-settled that when the respondent fails to complete the project and offer possession to the allottee by due date then as per Section 18 of the Real Estate(Regulation and Development) Act, 2016, the complainant is entitled to seek refund and the builder can not force him to continue with the project. In case of **Ireo Grace Real Tech Pvt Ltd. Vs Abhishek Khanna & Others, Civil Appeal No. 5785 of 2019** decided on 11.01.2021, it was held by the Hon'ble Apex Court of the land that when the builder fails to complete the project within the stipulated period and offer possession to the allottee, then he is entitled to seek refund.

8. The plea of the respondent is 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 ~~return~~ progress report to show the status of the construction has been placed on file nor there is any material to show the pace of construction at the site. The best evident in this regard would have been an affidavit of a person connected with the construction activities alongwith photographs. But no such effort was made in this regard. So, the oral plea of the respondent with regard to construction of the project going on at fast speed cannot be taken into consideration and just a ploy to defeat the claim of the claimant.

9. It is proved that the project has been abandoned and there is nothing on record to show that it has been revived. So, in such a situation, the respondent has failed to offer possession of the allotted unit to the complainant by due date and the claimant is entitled to seek refund of the amount deposited with it besides interest and compensation

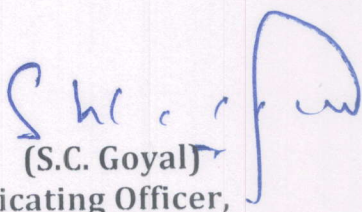
10. Thus, in view of my discussion above, the complaint filed by the complainant is hereby ordered to be accepted. Consequently, the respondent is directed to refund the entire amount of Rs.7,73,500/- received from the

S L L C
10/2/2021

complainant alongwith with interest @ 9.30p.a. from the date of each payment besides a sum of Rs.10,000/- is also allowed to the complainant on account of mental harassment and agony inclusive of litigation charges within a period of 90 days failing which legal consequences would follow.

11. File be consigned to the Registry.

10.03.2021


(S.C. Goyal)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram
10/3/2021