

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

Complaint no. : 3202 of 2020
First date of hearing: 12.11.2020
Date of decision : 04.03.2021

1.Narinder Singh
2.Nirmala Singh
Both RR/O: 701 Swarn Jayanti,
Plot no. GH-97, Sector 54,
Gurugram, Haryana.

Complainants

Versus

M/s Imperia Structures Ltd.
Address: A-25, Mohan Cooperative Industrial
Estate, Mathura Road, New Delhi-110044.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Complainants in person with
Shri Nitin Jaspal
None

Advocate for the complainants
None present for the respondent

ORDER

1. The present complaint dated 09.10.2020 had been filed by the complainants/allottees in Form CRA 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 to the allottees as per the agreement for sale executed inter se.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Project name and location	Esfera Phase II, Sector 37 C, Gurugram.
2.	Project area	17 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	64 of 2011 dated 16.07.2011. Valid/renewed up to 15.07.2017
5.	Name of licensee	M/s Prime Infoways Pvt. Ltd. and 2 others.
6.	HRERA registered/ not registered	'Esfera Phase II' registered vide no. 352 of 2017 dated 17.11.2017 for 60460 sq. mtrs.
7.	HRERA registration valid up to	30.06.2021 (31.12.2020 + 6 months extension in validity due to pandemic)
8.	Allotment letter	12.04.2012 [Page no. 17 of complaint]



9.	Unit no.	B-404, 4 th floor, Block B [Page no. 25 of complaint]
10.	Unit measuring	1850 sq. ft.
11.	Date of execution of buyer's agreement	24.01.2013 [Page no. 23 of complaint]
12.	Payment plan	Construction linked payment plan. [Page no. 64 of complaint]
13.	Total consideration as per statement of account dated 24.02.2020. (Page no. 73 of complaint)	Rs. 85,81,514/-
14.	Total amount paid by the complainants as per statement of account dated 24.02.2020. (Page no. 73 of complaint)	Rs. 80,73,997/-
15.	Due date of delivery of possession as per clause 10.1 of the said agreement i.e., three and a half years from the date of execution of this agreement. [Page no. 40 of complaint]	24.07.2016
16.	Date of offer of possession to the complainants	Not offered
17.	Delay in handing over possession till date of decision i.e., 04.03.2021	4 years 7 month 08 days
18.	Relief sought	1. Possession along with delay possession charges 2. To struck down the clause 1.2 of the EBA as this clause is in contravention of the terms and conditions of the booking/allotment letter.

3. As per clause 10.1 of the agreement, the possession was to be handed over within a period of three and a half years from the date of execution of this agreement which comes out to be 24.07.2016. Clause 10.1 of the buyer's agreement is reproduced below:

"10.1. POSSESSION

(a) Time of handing over the possession

The Developer/Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/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 Clauses 11.1, 11.2, 11.3 and Clause 41 or due to failure of Intending Allottee(s) to pay in time the price of the said Apartment along with 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."

4. The complainants submitted that on 11/02/2012, the complainants applied for a residential unit in this project having a super area of 1850/- for a Basic Sale Price (BSP) of Rs 60,38,400/- at an agreed rate of 3264/- per sq. by paying 10% of the total BSP at the time of booking. As per Para 4 of the "General terms & conditions for booking" given in the application form, the basic sale price of the unit was a firm price. Further, the booking was accepted by the respondent "as per terms & conditions contained in the application form" vide



their letter IMPERIA/2011-2012/CLP/DEM/IMP-E-0469 dated 23/02/2012. The complainants were then allotted a residential unit no. B-404 in tower B of the said project vide respondent's letter IMP-E-0469 dated 12/04/2012.

5. The complainants submitted that on the date of confirming the allotment viz 12/04/2012, the respondent had already raised demands for 30% of total BSP and 50% of the PLC and EDC/IDC despite the fact that no construction activity had started till then. The demanded amounts were duly paid by the complainants. However, the apartment buyer's agreement was not made available to complainants till they personally visited the offices of the respondent on 26/10/2012 and demanded a copy of the same. Also, there was no mention of any escalation clause, either in the booking application or in the allotment letter, the respondent unilaterally inserted an escalation clause (Clause 1.2) in the apartment buyer's agreement. This was duly objected by the complainants vide their letter 0469/NS dated 02/11/2012. However, the respondent vide letter IMP-E-0469 dated 26/11/2012 insisted that the complainants execute the unaltered agreement within 30 days. As the complainants were left with no choice, they signed the agreement under protest "*without*

prejudice to their right to seek redressal against the inclusion of escalation clause in the agreement contrary to the terms and condition of booking application” vide their letter 0469/NS dated 12/12/2012. While the complainants signed and forwarded the agreement to the respondent on 12/12/2012, the respondent finally executed the agreement on 24/01/2013 i.e., almost a full year after receiving 10% total Basic Sale Price (BSP).

6. Further the complainants submitted that by May 2017, the complainants had already paid the respondent a total of Rs 80,73,997/- towards the allotted unit. This amounts to 98% of the total sale consideration as per the apartment buyer’s agreement. But the respondent had neither completed the construction nor offered possession of the unit to the complainants till date. Clause 11.4 of the apartment buyer’s agreement stipulates that in the event of respondent’s failure to deliver possession of the unit within three years of the date of the agreement, the respondent is liable to refund the full amount paid by the complainants along with penal interest. Alternatively, the respondent is liable to pay compensation to the complainants for delay in handing over possession beyond 42 months from the date of agreement. Since the respondent’s

obligations under the buyer's agreement came into effect on 15/02/2012, the compensation is payable with effect from 15/08/2015.

7. The reply was filed by the respondent on 08.12.2020 but no one appeared on behalf of the respondent on the date of hearing.
8. The respondent contested the complaint on the following grounds:
 - i. It is submitted that the complainants are investors and approached the respondent company seeking good returns on his investment in any of the projects of the respondent company. Further, the complainants after being fully satisfied with the plans, sanctions and approvals of the project namely and applied for a residential unit in one of the esteemed project namely "Esfera" located at Sector 37C, Gurugram and consequently signed an application form dated 11.12.2012 for a total sale consideration of Rs. 85,84,747/- including taxes. Thereafter the respondent company allotted a residential unit admeasuring 1850 sq. ft. super area on the fourth floor (hereinafter referred to as the "said unit") in the project namely

"Esfera" located at Sector 37C, Gurugram vide apartment buyer's agreement dated 24.01.2013. It is pertinent to note that post execution of the agreement the respondent company and the complainants bound themselves to the terms and conditions enumerated in the application form dated 11.12.2012. It is further submitted that the complainants had only paid an amount of Rs.80,73,997/- and an amount of Rs. 5,10,750/- is still due on the complainants against the said residential unit.

- ii. The respondent submitted that the last payment as per schedule payment plan by the complainants was made way back in 2017 and thereafter, the complainants had not paid a single penny. The complainants with the evil intention to extort money from the respondent company had filed the present complaint before the hon'ble authority with false allegation and misleading facts with ulterior motive to earn wrongful gain from the respondent company. It is important to mention here that the project in which the present unit of the complainants is booked is at the stage of completion and possession of the respective unit will be delivered to the

complainants tentatively in the month of May 2021. The respondent further stated that the complainants had intentionally filed the present complaint just to extort money from the complainants in the stage when the possession of the residential unit space had been offered to the complainants and huge amount of assured return had already been received by the complainants.

9. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.
10. The authority on the basis of information, explanation, other submissions made, and the documents filed by both the parties, is of considered view that there is no need of further hearing in the complaint.
11. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The attention of the authority was drawn towards general terms and condition no. 4 attached with the application form wherein it is mentioned that the basic sale price of the said unit is firm but in the BBA as per clause 1.2,

provision of escalation charges has been provided. The allottees had submitted that this objection was raised by them at the time of signing of BBA. The allottees vide letter dated 12.12.2012 raised this objection and then signed the BBA without prejudice to their right to seek appropriate redressal against the inclusion of the escalation clause in the BBA which is contrary to the terms and conditions of the application for the allotment of the unit. The promoter is advised not to charge escalation costs. By virtue of clause 10.1 of the buyer's agreement executed between the parties on 24.01.2013, possession of the booked unit was to be delivered within a period of three and a half years from the date of execution of buyer's agreement. Therefore, the due date of handing over possession comes out to be 24.07.2016. In the present case, the respondent has not offered the possession of the unit to the complainants.

12. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 24.01.2013 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such

the complainants are entitled to delay possession charges at prescribed rate of interest i.e., 9.30 % p.a. w.e.f. 24.07.2016 till the date of handing over of the possession plus two months as per provisions of section 19(10) of the Real Estate (Regulation and Development) Act, 2016 of the booked unit as per the provisions of section 18(1) of the Act read with Rule 15 of the rules.

13. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:

- i. The respondent is directed to pay the interest at the prescribed rate i.e., 9.30 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 24.07.2016 till the date of handing over of the possession plus two months as per provisions of section 19(10) of the Real Estate (Regulation and Development) Act, 2016.
- ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter monthly payment of interest till handing over of possession shall be paid on or before 10th of each subsequent month.

- iii. The respondent is advised not to charge escalation costs. Further, the respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
 - iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - v. Interest on the delayed payments from the complainants shall be charged at the prescribed rate @ 9.30% by the respondent which is same as is being granted to the complainants in case of delayed possession charges.
14. Complaint stands disposed of.
 15. File be consigned to registry.

(Sami Kumar)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.03.2021

Judgement uploaded on 14.06.2021


(Dr. K.K. Khandelwal)
Chairman