

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 17.01.2019
Complaint No.	890/2018 Case Titled As Himanshu Giri V/S Imperia Structures Limited
Complainant	Himanshu Giri
Represented through	Complainant in person with Ms. Vaishnavi R.Iyer, Advocate
Respondent	Imperia Structures Limited
Respondent Represented through	Shri Ishaan Dang Advocate for the respondent.
Last date of hearing	First hearing
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is registered with the authority.

Rejoinder filed by the counsel for the complainant today.

Shri Ishaan Dang Advocate has appeared on behalf of the respondent and filed power of attorney and a copy of resolution passed by the Board of Directors.

Arguments heard.

As per clause 10.1 of the Builder Buyer Agreement dated 15.3.2013 for unit No.902, tower-D, in project "The Esfera" Sector-37C, Gurugram, possession was to be handed over to the complainant within a period of 36 months + 6 months grace period which comes out to be **15.9.2016**. It was a construction linked payment plan. However, the respondent has not

delivered the unit in time. Complainant has already paid Rs.78,72,431 /- to the respondent against total sale consideration of Rs.83,59,811/-.

Project is registered with the authority and the revised date of delivery of possession is 31.12.2020. However, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 15.9.2016 till handing over the possession as per provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.

Complaint is disposed of accordingly. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)
17.1.2019

Subhash Chander Kush
(Member)

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

Complaint No. : 890 of 2018
First date of Hearing : 17.01.2019
Date of decision : 17.01.2019

Mr Himanshu Giri
R/o C-52, Seema Apartments, Plot no 7,
Sector 11, Dwarka, New Delhi-110075

Complainant

Versus

M/s Imperia Structures Ltd
**Regd. Office : A-25, Mohan Co-
Operative Industrial Estate, New
Delhi-110044**

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Ms Vaishnavi R. Iyer Advocate for the complainant

Shri Ishaan Dhang Advocate for respondent

HARERA
GURUGRAM

ORDER

1. A complaint dated 14.09.2018 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 Mr Himanshu Giri, against the promoter M/s Imperia Structures Ltd on account of violation of clause 10.1 of the apartment buyer's agreement dated 15.03.2013 executed for unit no. 902, tower no D, in the project "The Esfera", Sector-37 C, Gurugram.

2. Since, the apartment buyer's agreement was executed on 15.03.2013 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"The Esfera" at Sector 37C, Gurugram
2.	Nature of real estate project	Group housing colony
3.	Project area	17 acres
4.	Unit no.	Unit no -902, tower D, 9 th floor
5.	Unit area	1435 sq. ft
6.	DTCP license	64 of 2011



7.	Registered/ un registered	Registered
8.	RERA registration no	352 of 2017
9.	Completion date as per RERA certificate	31.12.2020
10.	Date of apartment buyer's agreement	15.03.2013
11.	Total consideration	Rs 83,59,811/- (As per payment schedule dated 08.08.2018)
12.	Total amount paid by the complainant	Rs.78,72,431/- (As per payment schedule dated 08.08.2018)
13.	Payment plan	Construction Linked Plan
14.	Date of delivery of possession. (As per Clause 10.1- 3.5 years from the date of execution of agreement)	15.09.2016
15.	Delay of number of months/ years upto 17.01.2019	2 years 4 months 2 days
16.	Penalty clause as per apartment buyer's agreement	Clause 11.4 – Rs 5/- per sq. ft per month of the super area for the period of delay



4. The details provided above have been checked as per the case file available on record provided by complainant and respondent. As per apartment buyer's agreement executed between the parties, the possession of the aforesaid unit was

to be delivered by 15.09.2016. The respondent has failed to deliver the possession of the booked unit till date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 17.01.2019. The case came up for hearing on 17.01.2019. The reply has been filed on behalf of the respondent.

Facts of the case

6. The complainant submitted that he applied for a unit through an application form for provisional allotment of the unit dated 16.10.2012 and paid a booking amount of Rs.6,20,000/- vide cheque no. 014944 dated 16.10.2012 duly acknowledged by the respondent. Thereafter the complainant was allotted unit no. D-902, 9th floor having super area of 1435 sq. ft. vide allotment letter dated 15.03.2013 at "The Esfera", Sector-37 C, Gurugram, Haryana which is developed by the respondent.
7. The complainant submitted that he entered into an apartment buyer's agreement with the respondent on 15.03.2013 for purchase of the said unit for a total sale



consideration of Rs. 79,76,575/- with terms and conditions which were completely one sided and unjustified in nature.

8. The complainant submitted that the respondent discriminated and exploited the complainant by imposing arbitrary terms and conditions in the agreement while booking the aforesaid unit.

9. The complainant submitted that he has paid an total amount of Rs.78,72,431/- each installment paid by him was duly received by the respondent and accordingly, acknowledgements thereof were duly issued to him. It is very pertinent to mention 100% of the total sale consideration has been paid by the complainant in accordance with the payment plan.

10. The complainant submitted that he had applied for a loan from SBI Bank for an amount of Rs.54,00,000/- and the bank sanctioned the loan and tripartite agreement was executed between the bank, complainant and the respondent dated 13.05.2014. It pertinent to mention, in the tripartite agreement also the respondents had agreed to complete the



unit and project as per the apartment buyer's agreement earlier executed dated 15.03.2013.

11. The complainant further submitted that he is a salaried person with limited financial resources, has taken loan on the above mentioned property. It is a huge financial burden on him to bear the EMI (principal + interest) due to delay in the project.

12. The complainant further submitted that as per the agreement, the possession of the said unit was to be given by **15.09.2016** i.e. within three and half years from the date of execution of this agreement as per clause 10.1 of the apartment buyer's agreement. Thus, project should have been completed and possession ought to have been given to complainant in adherence to respondent own commitments and obligations.

13. The complainant further submitted that he made regular follow-ups thorough various emails, several visits, and made numerous calls but only assurances, made by the respondent was that the possession of fully constructed unit as promised would be handed over soon, which has not happened till date.



14. The complainant submitted that respondent miserably failed to complete the construction of work of the project “THE ESFERA” within assured time limit, thereby grossly violating the terms and conditions of the printed agreement entered between the parties.

15. The complainant also submitted that keeping in view the snail paced work at the construction site and half-hearted promises of the respondent, the chances of getting physical possession of the assured unit in near future seems bleak and that the same is evident of the irresponsible and desultory attitude and conduct of the respondent, consequently injuring the interest of the buyers including the complainant who has spent his entire hard earned savings in order to buy this home.

Issues raised by the complainant

16. The issues raised by the complainant are as follows :-

- i. Whether the respondent has breached the provisions of the Act as well as the agreement by not delivering the possession of the said unit?



- ii. Whether there has been unreasonable delay in delivery of the apartment to the complainant?
- iii. Whether the respondent is liable to refund the total amount paid by the complainant along with interest on the amount paid to them by the complainant at the same rate which they charged from the complainant in case of delayed payment by the complainant?

Reliefs sought

17. The reliefs sought by the complainant are as follows :-
 - i. To direct the respondent to refund the total amount i.e Rs.78,72,431/- paid by the complainant along with the interest calculated @18% per annum.
 - ii. To direct the respondent to grant an award of Rs.1,00,000/- as the legal fee paid by the complaint in favour of the complainant and against the respondent.

Respondent's Reply

18. The respondent submitted that the construction activity for tower A,B,C and D is going in full swing. The construction of Tower D in which the complainant have been allotted the unit is on the verge of completion and the respondent shall



handover the possession of the said unit as per the timelines provided to RERA.

19. The respondent further submitted that towers F, G and H in the aforesaid project have been duly completed and the respondent accordingly applied for the occupation certificate on 20.06.2017 which is imperative for handing over of possession in accordance with law. However, the competent authority granted the said occupancy certificate to the respondent on 07.02.2018.

20. The respondent also submitted that the complainant after being fully satisfied with the progress of the said project of the respondent and duly understanding the terms and conditions that are associated with the construction submitted an application booking form dated 16.10.2012 with the respondent and accordingly a flat bearing no 902, tower D having an area of 1435 sq. ft for a consideration of Rs 83,59,811/- was allotted to him.

21. The respondent also submitted that there is no delay which can be attributed to respondent in completing the construction and handing over the flats to the complainant.



The delay mainly occurred in getting all statutory clearances from the concerned statutory authorities, lack of availability of raw materials, labour strikes, ban on construction activities and delay caused in obtaining the clearance for water supply which was hindered in the locality due to the restrictions imposed by the Hon'ble High Court of Punjab and Haryana in CWP 20032 OF 2008 which was supplemented by the office order dated 13.09.2012 passed by the Town and Country Planning Department, Haryana.

22. The respondent also submitted that vide clause 11.1 of the apartment buyer's agreement, the complainant has duly consented that in the event of force majeure, the respondent will be entitled to extension of time for the delivery of possession of the said unit. Hence the respondent is duly entitled to an extension of time.

Determination of issues

23. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issues wise findings of the authority is as under :



- i. As regards the **first issue** : As per clause 10.1 of apartment buyer agreement dated 15.03.2013, the respondent is liable to deliver the possession of the booked unit within a period of 3.5 years from the date of execution of apartment buyer agreement i.e due date of 15.09.2016. In the present case, the respondent has failed to deliver the possession of the booked unit till date. Therefore the respondent has violated the section 11 (4) (a) of Real Estate (Regulation and Development) Act, 2016 and clause 10.1 of the apartment buyer agreement executed between both the parties.
- ii. As regards the **second issue**, as per clause 10.1 of the apartment buyer's agreement the respondent was liable to deliver the possession of the booked unit by due date of possession i.e 15.09.2016. Therefore there has been an unreasonable delay on part of the respondent in the delivery of possession of the booked unit by 2 years 4 months and 2 days calculated from the due date of possession i.e 15.09.2016.



- iii. As regards the **third issue**, As the respondent has committed a default in handing over the possession on due date of 11.08.2016 as per clause 10.1 of the apartment buyer's agreement. Therefore, the respondent is liable to deliver the possession of the booked apartment along with delayed interest under section 18 (1) proviso to the complainant at the prescribed rate of 10.75%, for every month of delay till the date of handing over of possession. As the tower D in which the booked unit is located is on the verge of completion according to reply submitted by the respondent, therefore in the interest of the project and other allottees, the complainant cannot be allowed refund.

Findings of the Authority :

24. 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.



25. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town & Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

26. In the present case, the authority has observed that as per clause 10.1 of the builder buyer agreement dated 15.3.2013 for unit no 902, tower-D, in project "The Esfera" Sector-37C, Gurugram, possession was to be handed over to the complainant within a period of 36 months + 6 months grace period which comes out to be **15.9.2016**. It was a construction linked payment plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs. 78,72,431/- to the respondent against total sale consideration of Rs. 83,59,811/-. Project is registered with the authority and the revised date of delivery of possession is 31.12.2020.



Decision and directions of the authority

27. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play :

- i. The respondent is directed to provide delay possession charges at the prescribed rate of 10.75% per annum for every month of delay w.e.f 15.9.2016 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016.
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.



28. The order is pronounced.

29. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated : 17.01.2019

Judgement uploaded on 12.02.2019



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