



HARERA
GURUGRAM

S; ,HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विभाग

गृह सिविल लाईंस गुरुग्राम हरियाणा

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

**Complaint No: 1296/2018
Date of Decision : 05.03.2021**

**Shalini Gupta W/o Saket Gupta
R/o H. No.129/2, Ward No.3
Gandhi Gali,Near Ganesh High School, Faruq Nagar,
Gurugram-122506(Now at New Delhi)**

Complainant

V/s

**M/s Imperia Wishfield Pvt. Ltd.
A-25,Mohan Cooperative Industrial Area
Mathura Road, New Delhi**

Respondent

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

Argued by:

For Complainant:

Shri Prikshit Kumar,, Advocate

For Respondent:

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 (hereinafter referred as the Rules of 2017) filed by Ms Shalini Gupta seeking refund of Rs.16,23,438/- deposited with the respondent for booking a flat

*Shri C. S. Gupta
5/3/2021*

No. S S08, 5th floor measuring 659 sq ft. in its project known as "Elvedor Studio Apartment" situated in Sectors 37-C Gurugram 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:

Project related details		
I.	Name of the project	"ELVEDOR STUDIO APARMENTS" Sector 37-C Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Commercial
Unit related details		
IV.	Unit No. / Plot No.	S_ S08, 5 th 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)	20.04.2015
XI.	Date of provisional allotment(original)	04.05.2015
XII.	Date of execution of BBA	
XIII.	Due date of possession as per BBA	
XIV.	Delay in handing over possession till date	

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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. 41,86,141/-
XVII	Total amount paid by the complainants	Rs.16,23,438/-

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

A project known by the name of ELVEDOR STUDIO APARMENTS" Sector 37-C Gurugram was to be developed by the respondent in the year 2012. The original allottee coming to know about that project booked a commercial unit vide application dated 04.05.2012 and the same was allotted to him having a super area of 625 sq. ft on 7th floor. A sum of Rs.3,20,000/- was deposited against the total cost of the unit and which led to issuance of receipt dated 21.05.2012 as C/3. An acknowledgment in this regard C/4 dated 29.05.2012 was also issued. A Welcome letter C/5 was issued by the respondent on 29.05.2012. After that the respondent raised various demands against that unit and the same were met by the original allottee vide receipts C/7 and C/9 respectively. A letter of confirmation with regard to allotment of the unit was subsequently issued on 30.03.2013 vide Annexure C/11. It is the case of the complainant that vide allotment letter dated 25.09.2013, the respondent changed the number of the allotted unit from 5_ S0 8 to 7_ A02. The complainant was interested in purchasing a unit in the above mentioned project of the respondent. So, she contacted the original allottee as well the respondent in the year 2015 and was made to understand that the project would be completed by 2017 from the date of booking. On that assurance she agreed to purchase the allotted unit

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from the original buyer and which led to execution of Indemnity-cum-Undertaking Declaration dated 08.10.2015 as Annexure C/13.

3. It is further the case of the complainant that after executing Indemnity-cum-Undertaking and Declaration, she paid a sum of Rs.22,800/- towards transfer and the same was transferred on 30.10.2015 in her favour. However, to her utter surprise, she received a letter Annexure 19 dated 23.01.2017 from the respondent and vide which it unilaterally modified the allotment and upgraded it. Though she sought information in this regard but with no positive result. It was made to understand that she had been allotted a unit in the project of the respondent known as 37th Avenue and not "Svenska Hotels". Though she paid some amount after that in the face of cancellation of the allotted unit but the construction of the project did not pick up. In fact, there was construction in only one tower which was in the project and no construction was being undertaken of other towers at the spot. So, same led to issuance of emails by the complainant to the respondent on 20.12.2017, 21.01.2018 and 21.06.2018 vide Annexure C/3. No reply to those communications was received and rather, the respondent raised a further demand of Rs.3,49,880/- vide Annexure C/24. Later on, the complainant came to know that the project has been abandoned. So, she wrote a letter to the respondent requesting for providing her copies of RERA approvals alongwith current progress of the project vide letter Annexure C/25 dated 02.07.2018. It is also the case of the complainant that she came to know later on that there was collaboration agreement dated 06.12.2012 between the respondent and one M/s Prime IT Solutions Pvt Ltd. but licence in favour of latter had already expired. Even, civil litigation in this regard was pending between the respondent and M/s Prima IT Solutions Pvt Ltd. So, keeping view of that fact, the complainant again wrote emails dated 10.09.2018, 17.09.2018, 25.09.2018 Annexures C/31 to C/33 respectively but

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did not produce the desired results. So, on these broad averments, the complainant filed a complaint seeking refund of the money deposited with the respondent besides interest and compensation.

4. But the case of the respondent as set up in the written reply is that though the original allottee was allotted a unit but the same was subsequently transferred in favour of the complainant on 08.10.2015. It was denied that any illegal payment was raised against the allotted unit. It was also denied that the project was abandoned and there is no construction activity at the spot. It was also denied that the complainant is entitled to seek refund of the amount deposited with it. Though the complainant opted for construction linked payment plan but failed to pay the amount due as and when demanded from her. It was denied that the development agreement dated 06.12.2011 entered between the respondent and M/s Prime IT Solutions Pvt. Ltd. was not registered one. In fact, that agreement was duly registered and necessary permissions and sanctions for the project to be developed at Sector-37C, Gurugram were obtained. No doubt, there was some dispute between the respondent and M/s Prime It Solutions Pvt. Ltd. but the same ended into a compromise and which led to sanction of mutation bearing no. 1721 in favour of the respondent. It was pleaded that the pace of construction of the project in which the allotment of the unit was made could not pick up due to various reasons and the claimant cannot take the benefit of the same. If she is allowed to withdraw from the project, then it would be detrimental to the interest of the project and other allottees.

5. All other our averments made in the complaint were denied in toto.

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

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7. It is an admitted fact that vide application form dated 04.05.2012 Annexure C-1, the original buyer was allotted a commercial unit by the respondent in its project known as **ESFARA ELVEDOR** having a super area of 625 sq. ft. in Sector 37-C, Gurugram. A sum of Rs. 3,20,000/- was paid against the allotment of that unit which led to issuance of welcome letter dated 29.05.2012 vide annexure C-5. A payment of Rs. 4,76,853/- was again made on 29.05.2012 vide Annexure C-6 and which led to its deposit on 20.06.2012 vide Annexure-C7. However, a sum of Rs. 43,349/- was also paid by the original allottee towards the allotted unit on the basis of demand raised and paid vide receipt C/9. It is also a fact that vide letter Annexure C-11 dated 30.03.2013, the respondent confirmed the allotment of a studio apartment bearing no. 5_08 on 5th floor, Tower-B in the project **Esfera Elvedor** and measuring 659 sq. ft. at a basic sale price of Rs. 4947 per sq. ft. and other charges which also led to issuance of allotment letter dated 25.09.2013 as Annexures-12. It has come on the record that the allotment made by the respondent in favour of the original allottee was changed to unit no. 7_A02 on 7th floor, Tower-B from unit no. S_08, 5th floor, Tower-B of the abovementioned project. But in the year 2015, the complainant purchased the abovementioned unit and became its allottee on 12.10.2015 vide Annexure-C-15 after execution of Indemnity-cum-Undertaking/Declaration dated 08.10.2015 (Annexure-C-13). She was also issued a welcome letter Annexure-C-16 on 23.10.2015 by the respondent of the allotted unit. It has come on record that after the complainant paid a sum of Rs. 3,40,188/- to the respondent on the basis of demand raised on 13.01.2016, she did not pay any other amount despite demand being raised for Rs. 4,20,248/- vide Annexure -C-20. So, in this way, a total sum of Rs. 16,23,438/- was paid for the allotted unit to the respondent by October, 2017 against a total sale consideration Rs. 48,86,141/-. The due date of completion of the project and offering possession

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of the allotted unit as per abovementioned facts comes to the year 2017 or at the most my middle of 2018. A complaint seeking refund of the amount deposited with the respondent was filed on 10.10.2018. Now, the question for consideration arises as to whether in the circumstances detailed above, can the complainant withdrew from the project or be asked to continue with the same and is entitled for only delayed possession charges. A perusal of various documents placed on the file by both the parties show that no specific date for handing over possession of the allotted unit has been fixed. So, in such a situation when the project was launched in the year 2012 (04.05.2012) and the allotment of changed unit was confirmed in favour of the complainant on 08.10.2015, then, it should have been taken from the back date and the project should have been completed by the year 2017. In cases of **Fortune Infrastructure & Anr Vs Trevor D'Lima & Ors, 2018(5) SCC 442** and **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 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. *It was also observed that a person cannot be made 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 one. It is evident from perusal of various documents placed on file that the original booking of a commercial unit was made in favour of the original allottee on 29.05.2013 on the basis of application dated 04.05.2012. Though,

the original allottee deposited different amount during the tenure of allotment
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but subsequently, the complainant purchased that unit on 08.10.2015 and an endorsement in this regard was made in her favour by the respondent. It was also made to understand that project was likely to be completed upto the year 2017 or at the most by March, 2018. But despite that no progress in the construction of the project was seen. There is nothing on the record to suggest that either the construction of the project of the allotted unit is going on at a fast pace and what is the stage and extent of construction. The best evidence in this regard would have been quarterly progress reports filed in this regard before the learned Authority or an affidavit of respondent's responsible person connected with construction activities. No such effort was made by the respondent to prove the stage and extent of construction of the project at the site.

8. The matter may be taken from another angle.

After the allotment of the unit in favour of the complainant in the year 2015, she made part payments on the basis of demand raised vide letter C-17 and which led to issuance of fresh allotment on 23.11.2017 vide Annexure C-19. She also paid a sum of Rs. 4,20,248/- against the allotted unit. It is not a disputed that upto October, 2017, the complainant had pay a sum of Rs. 16,23,438/- against the total sale consideration Rs. 41,86,141/-. But despite that, the respondent was unable to show tangible progress of the project of the allotted unit despite concerns being raised by the complainant vide e-mails C-23, C-32 to C-34. Even the photograph C-30 placed on the file do not depict a rosy picture of the project. Though during the course of arguments, it is pleaded on behalf of the respondent that the project is going to be completed soon but no evidence worth the name was led/placed on record. In fact, there was a dispute with regard to ownership of the land beneath the project between the

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respondent and M/s Prime IT Solutions Pvt. Ltd. which ended in compromise on 21.01.2017 as evident from Annexure-R/A. Thus, when the title of the respondent with regard to land of the project was under dispute, then how it could have raised the construction and to complete it to be delivered to the claimant including various other allottees by the due date. All these factors taken together clearly indicate that the respondent is not in a position to complete the project and the allotted unit and had abandoned the same. So, in such a situation, the claimant is entitled to seek refund of the amount deposited with it besides interest and compensation.

9. Thus, in view of my discussion above, the complaint filed by the complainant is hereby is ordered to be accepted. Consequently, she is held entitled to refund of Rs. 16,23,438/- besides interest at the rate of 9.3% P.A. from the respondent with effect from 08.10.2015 up to the date of receipt of the same. In addition to that a sum of Rs. 20,000/- is also awarded to the complainant as compensation inclusive of litigation charges.

10. This order be complied with by the respondent within a period of 90 days failing which legal consequences would follow.

11. File be consigned to the Registry.

05.03.2021


(S.C. Goyal)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
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