

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,  
HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM**

**Complaint no. : 2198 of 2018**

**Date of decision : 12.10.2021**

NEERAJ MOHAN  
R/O : Jai Amandam,  
Ashram Marg, Bariatu,  
Ranchi, Jharkahnd

**Complainant**

Versus

IMPERIA WISHFIELD PVT. LTD.  
A-25, Mohan Co-operative  
Industrial Estate, Mathura Road,  
New Delhi

**Respondent**

**APPEARANCE:**


For Complainant:

Mr. Parikshit Kumar (Advocate)

For Respondent:

Mr. Rahul Pandey (Advocate)

**ORDER**

  
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1. This is a complaint filed by Sh. Neeraj Mohan (also called as buyer) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondent/developer.
2. As per complainant, on 19.11.2012, he booked a studio apartment in respondent's project **Esfera Elvedor**, situated at sector-37 C, Gurugram and made payment of Rs 3,62,450 as booking amount. The respondent issued a welcome letter dated 04.12.2012 and subsequently allotted a unit No. 13 \_ A14 in Tower Evita, admeasuring 659 sq. ft. for a total consideration of Rs 47,06,481 including BSP, PLC, EDC and etc. A buyer's agreement was executed on 20.03.2014.
3. As per Clause 11 (a) of buyer's agreement, respondent had agreed to deliver the possession of the unit within 60 months from the date of execution of buyer's agreement. The respondent failed to complete the construction work and consequently failed to deliver the same till date.
4. As per the payment plan opted by the complainant, he made timely payment of Rs 41,55,986/- i.e 85 % of entire agreed sale consideration along with miscellaneous and additional charges etc, but to his utter dismay, the possession of the apartment has not been offered as agreed in buyer's agreement.

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5. Even after the receipt of 85 % of total consideration, the construction remained halted for a period of 2 years and when he (complainant) enquired about the progress of construction work he came to know that the respondent does not have requisite sanctions or approvals from concerned authorities. The DTCP license was issued in favour of Prime IT Solutions Pvt. Ltd and not in favour of respondent and even the said license expired on 11.05.2016 i.e. prior to receipt of last payment.
6. There is no development in the project. Construction activities have been stopped since 2016. Even after expiry of 6 years from the date of booking, till date neither the license no. 47 of 2012 has been transferred in the name of respondent nor the same has been renewed. The construction work is nowhere near completion and only rudimentary structure of one out of the several buildings has been erected on the project land. Complainant even approached respondent for refund of his money, but respondent refused to entertain any request for refund.
7. Contending that the respondent has breached the fundamental term of the contract, by inordinately delaying the delivery of the possession, the booking of the unit was made in the year 2012 and till date the project is nowhere near completion, the complainant has sought refund of entire

amount of Rs 41,55,986 paid by him till now, along with interest @ 18 % p.a. or at such rates as may be prescribed.

8. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
<b>PROJECT DETAILS</b>		
1.	Project name and location	" <b>Esfera Elevador</b> ", Sector 37 C, Gurugram,
2.	Project area	2.00 acres
3.	Nature of the project	Commercial
4.	DTCP license no. and validity status	47 of 2012 dated 12.05.2012 valid upto 11.05.2016
5.	RERA Registered/ not registered	<b>Not registered</b>
<b>UNIT DETAILS</b>		
1.	Unit no.	13 _A14
2.	Unit measuring	659 sq. ft.
3.	Date of Booking	19.11.2012
4.	Date of Buyer's Agreement	20.03.2014
5.	As per the Clause 11 (a) of buyer's agreement, respondent had agreed to deliver the possession of	20.03.2019 (Calculated from the date of agreement)



	the unit within 60 months from the date of execution of buyer's agreement	
6.	Delay in handing over of possession till date	2 years 06 months
<b>PAYMENT DETAILS</b>		
7.	Total sale consideration	Rs 47,06,481
8.	Amount paid by the complainant	Rs 41,55,986
9.	Payment Plan	Construction Linked Plan

10. The case of respondent as set out in the written reply filed by it is that it (respondent) had intended to complete the construction of the subject flat till 19.03.2019. Civil structure of the tower in which subject unit is located, has been completed and only internal and external finishing work is remaining. The respondent is willing to complete the construction work within six to nine months i.e. by June 2022. The delay in handing over the possession has occurred due to certain force majeure circumstances, which includes sudden outbreak of Covid 19. Even the Supreme Court banned the construction activities vide its order dated November 2019 which was lifted completely only on 14<sup>th</sup> February 2020.

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11. The construction activity was hit by the national lockdown which was imposed by the government of India on 24<sup>th</sup> March 2020 due to pandemic Covid -19 and the same affected the construction activity. Moreover, every year during winters NGT imposed stay on the construction activities due to serious air pollution. The real estate sector has remained worst affected by demonetisation as most of the transactions take place in cash. Further, the construction activity was directly affected by shortage of water, Hon'ble Punjab and Haryana High Court vide order dated 16.07.2012 in CWP No. 20032 of 2009 directed to use only treated water from available sewerage treatment plants, accordingly only 10-15 % of required quantity was available at construction sites.

12. It (respondent) averred further that as per the Collaboration agreement dated 06.12.2012, entered between respondent and M/s Prime IT Solutions Pvt. Ltd., the respondent is legally entitled to undertake construction and development of the project. Even before the said date of Collaboration Agreement, both the companies were under the same management and directors. The building plans of the project under the license No. 47 of 2012 was approved on 25.06.2013. the respondent has become an absolute owner of License land under license No. 47 of 2012 in terms of compromise dated 12.01.2016. the respondent averred that it is ready to compensate the complainant for delay in handing over possession as per



applicable rules. Contending all this, respondent requested for 12-15 months time to complete the project and prayed for dismissal of complaint.

13.I have heard learned counsels for parties and perused the record.

14.Respondent has referred various orders passed by Hon'ble Supreme Court and High Court of Punjab and Haryana, which allegedly affected the construction activities and orders of National Green Tribunal stopping construction work, respectively. Copy of no such order has been placed on record. Learned counsel for complainants disputed any such orders. Moreover, it is not clear as till when construction activities remained stopped due to said

15.It's not denied that respondent got DTCP license in 2012 and the same has expired in the year 2016. Respondent has not placed any document on record to establish that the license has been renewed and it has a valid license to carry out the construction work. The delay cannot be justified on such bald claims, without substantiating the same through evidence

16.As far as demonetization of some currency notes is concerned, same affected the construction work very remotely. There was no restriction on electronic payments. Most of people in India have opened bank accounts.

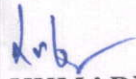
17.When a buyer has made payment of almost 85 % of total sale consideration of unit, same was well within his/her right to



claim possession of his/her dream unit in time. Same cannot be made to wait indefinitely. The respondent has filed affidavit of Sh. Jay Kumar, project manager, wherein it has been clearly stated that 42 % - 45 % of work is complete and it will take 12 to 18 months to complete remaining construction. It is an admitted fact that project/unit is not complete even till today. Respondent has thus failed to complete construction of project /unit allotted to complainant, in agreed period.

18. Considering facts stated above, complaint in hands is accordingly allowed and respondent is directed to refund entire amount paid by complainant i.e. Rs 41,55,986 within 90 days from today, with interest @ 9.3 % p.a. from the date of each payment, till realisation of amount. A cost of litigation Rs 1 lac is also imposed upon respondent, to be paid to complainant.

**12.10.2021**

  
**(RAJENDER KUMAR)**

**Adjudicating Officer**

**Haryana Real Estate Regulatory Authority**

**Gurugram**

Judgement uploaded on 14.10.2021.