

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

Complaint no. : 2149 of 2018

Date of decision : 12.10.2021

BAL KRISHAN GARG AND  
AMIT SINGHAL  
R/O : Block-91, First Floor,  
Gali Mem Wali,  
Katra Bariyan, Fatehpuri,  
Delhi-100006

**Complainants**

Versus

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

**Respondent**


**APPEARANCE:**

For Complainant:

Mr. Parikshit Kumar (Adv)

For Respondent:

Mr. Rahul Pandey (Adv)

  
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**ORDER**

1. This is a complaint filed by Sh. Bal Krishan Garg and Amit Singhal (also called as buyers) 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 no. 1, on 30.03.2012, he booked a studio apartment in respondent's project **Esfera Elvedor**, situated at sector-37 C, Gurugram and made payment of Rs 3,18,750 as booking amount. The respondent issued welcome letter dated 08.05.2012 for a unit admeasuring 625 sq. ft. in the said project. Again on 31.07.2012, respondent issued another welcome letter and unilaterally increased the size of the studio apartment from 625 sq. ft. to 659 sq. ft. the respondent issued a confirmation letter dated 21.03.2013, confirming allotment of unit no. 6 \_ S13 on 6<sup>th</sup> floor in Tower B admeasuring 659 sq. ft. the respondent vide an allotment letter dated 23.09.2013 unilaterally changed the apartment to unit no. A\_ A09, on 8<sup>th</sup> floor in Tower Evita in project Elevador Studio for a total sale consideration of Rs 43,57,211 including BSP, PLC, EDC and etc
3. The complainant no. 1 approached respondent to transfer the unit in name of complainant no. 2. Accordingly, complainant

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- no. 1 duly executed an indemnity cum undertaking and a relinquishment deed dated 10.09.2015 in favour of complainant no. 2, out of love and affection. Both the complainants executed supporting affidavits dated 10.09.2015 with respect to such transfer.
4. Despite the respondent providing the name change format, refused to acknowledge ~~the~~ said transfer of name and continued to issue the demand letters in name of complainant no. 1.
  5. As per the payment plan opted by the complainant, he made timely payment of Rs 19,86,646. Even after the receipt of the said amount the construction remained halted for a period of 2 years and when he (complainant no. 1) 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 7 years from the date of booking. 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

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near completion. Only rudimentary structure of one out of the several buildings has been erected on the project land. He (complainant no. 1) vide email dated 13.11.2018 sought refund of money paid by him but same (respondent) failed to do so.

7. The Hon'ble Authority has appointed a local commission for the said project and as per report of Local Commissioner dated neither the license nor building plan for the project was approved in favour of respondent. In said report, it is clearly mentioned that construction work is only 30 % complete.
8. Contending that the respondent has breached the fundamental term of the contract, by inordinately delaying the delivery of the possession, and unilaterally changing the unit and payment plan, the complainant has sought refund of entire amount of Rs 19,86,646 paid by him till now, along with interest at the prescribed rate and Rs 5,00,000 towards mental agony and Rs 50,000 as cost of litigation.
9. 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	" Esfera Elevador", Sector 37 C, Gurugram,
2.	Project area	2.00 acres

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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>

**UNIT DETAILS**

1.	Unit no.	A_ A09
2.	Unit measuring	659 sq. ft
3.	Date of Booking	30.03.2012
4.	Date of Allotment Letter	23.09.2013
5.	Amount paid by the complainant	Rs 19,86,646
6.	Total Consideration	Rs 43,57,211
7.	Payment Plan	Construction linked

8. The case of respondent as set out in the written reply filed by it, is that it (respondent) had allotted studio apartment A09 to complainant in project Elevador Retail. The respondent had intended to complete the construction of the subject flat on time. The possession of the unit will be delivered by June 2022. Civil structure of the tower in which the subject unit is located, has been completed and only internal and external finishing work is remaining. The delay in handing over the possession has occurred due to certain force majeure circumstances, which

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include sudden outbreak of Covid 19. Due to air pollution levels in Delhi NCR, 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.

9. 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 construction activities due to serious air pollution. The real estate sector has remained worst affected by demonetisation of currency notes as most of the transaction 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. Only 10-15 % of required quantity was available at construction sites.

10. It (respondent) further averred that as per 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 Licensed land under license No. 47 of 2012 in terms of compromise dated 12.01.2016. As per respondent, 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.

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

12. Respondent has referred various orders passed by Hon'ble Supreme Court and High Court of Punjab and Haryana, which allegedly affected construction activities and orders of National Green Tribunal, due to which construction work was stopped,. Copy of no such order has been placed on record. Learned counsel for complainants disputed such orders. It is not clear as till when construction activities remained stopped due to those orders. Its alleged that respondent got DTCP license in 2012 and the same has been expired in the year 2016. The 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.

13. The delay in completing construction cannot be justified on such bald claims, without substantiating the same through evidence.


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14. <sup>to</sup> As far as demonetization of some currency notes is concerned, same has very remotely affected the construction work. There was no restriction on electronic payments. Most of persons have already opened their bank accounts.
15. A buyer cannot be made to wait indefinitely for his/her dream home. The respondent has filed an 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. Thus, it is an admitted fact that project/unit is not complete even till today.
16. The allegation that complainant no. 1 applied for transfer of allotted unit in favour of complainant no. 2, to the developer/respondent and latter refused to transfer is not denied. No provision is shown which barred an allottee from transferring his/her unit. The respondent had no right to refuse transfer of unit as claimed by complainant.
17. Considering facts stated above, complaint in hands is allowed and respondent is directed to refund entire amount paid by complainant i.e. Rs 19,86,646 within 90 days from today, with interest @ 9.3 % p.a. from the date of each payment, till realisation of amount. Litigation cost of Rs 1 lac is also imposed upon respondent, to be paid to complainant.

File be consigned to registry.

12.10.2021

  
**(RAJENDER KUMAR)**  
**Adjudicating Officer**  
**Haryana Real Estate Regulatory Authority**  
**Gurugram**