

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

Complaint no. : 2866 of 2020
Date of decision : 28.10.2021

BADAN SINGH CHAUHAN
R/O : D-884, Mohalla
Moosaaka Village,
Tehsil Palwal

Complainant

Versus

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

Respondent

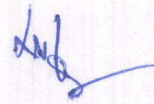
APPEARANCE:

For Complainant:

Mr. Siddhant Sharma Advocate

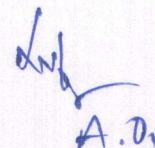
For Respondent:

Mr. Rahul Pandey Advocate


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ORDER

1. This is a complaint filed by Sh. Badan Singh Chauhan (also called as buyer) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act of 2016) 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 21.03.2012, he booked a studio apartment in respondent's project **Esfera Elvedor**, situated at sector-37 C, Gurugram and made payment of Rs 4,00,000 as booking amount. The respondent issued welcome letter dated 08.05.2012. It mentioned about studio apartment admeasuring 825 sq. ft in tower Rubix in project **Elevador Esfera**. The respondent issued another letter dated 31.07.2012, intimating the increase of area of studio apartment to 900 sq. ft. the respondent vide confirmation of unit allotment letter dated 21.03.2013 allotted unit no. 2_S14 admeasuring 900 sq. ft. on 2nd floor in Tower B for total consideration of Rs 58,01,108.
3. The respondent vide email dated 02.02.2015, changed allotted unit to unit no. 6A_A14 on 6th floor in tower Evita. The complainant vide email dated 02.02.2015 refused to accept said unilateral change of unit and sought refund of his amount. The respondent vide letter dated 06.10.2015 again

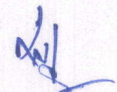

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changed the unit to a new unit no. 5_S05 in project 37th Avenue and sought further charges from complainant. The respondent vide another letter dated 23.01.2017 informed that the studio apartment has been upgraded to hotel room and project has been changed into hotel project named as Svenska Hotels. He (complainant) vide letter dated 11.05.2017 objected to the said upgradation as his consent was never obtained prior to the change.

4. Despite resolving the issue of unilateral change of unit and nature of project, the respondent sent demand letters dated 05.01.2016 and 05.06.2018 for payment of Rs 4,64,000 and Rs 15,37,166 respectively. He (complainant) did not pay amounts stated in said letter and requested respondent to refund his money.
5. The complainant has paid Rs 11,53,384 as per payment demands raised by the respondent towards the allotted unit, against total consideration of Rs 58,01,108. In year 2013, he (complainant) had signed buyer' agreement but respondent withheld the same with itself and did not execute the same. He being dissatisfied with the conduct of respondent, as it had unilaterally changed unit four times and failed to give possession of any unit, he (complainant) through his letters dated 24.02.2018, 19.06.2018 and email dated 05.10.2018

- sought refund of his money. He has served a legal notice dated 18.01.2016 upon the respondent.
6. He (complainant) approached CM Grievance Redressal System, Haryana. The matter was disposed on 26.02.2018 with a direction to approach RERA, as said complaint was not maintainable before it.
 7. He (complainant) filed a complaint before RERA Gurugram, and sought refund of his money, the Authority vide its final order dated 12.03.2019 directed respondent to pay the interest on delayed possession. The complainant challenged the said order before Appellate Tribunal, Chandigarh and sought refund of his money. Hon'ble Appellate Tribunal, vide its order dated 05.08.202 set aside order of the Authority and remanded for fresh decision in accordance with law.
 8. In this way, complainant has sought refund of entire amount of Rs 11,53,384 paid by him till now, along with interest at prescribed rate from 21.03.2012 till date , Rs 10,00,000 as compensation with interest at prescribed rate as per rules, pendite lite interest as per rules from the date of payment of amounts till realisation and Rs 1,10,000 towards the cost of litigation.
 9. The particulars of the project, in tabular form are reproduced as under:


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S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	" Esfera Elevador, Sector 37 C, Gurugram,
2.	Project area	4.00 acres
3.	Nature of the project	Commercial
4.	DTCP license no. and validity status	51 of 2012 dated 17.05.2012 valid upto 16.05.2018
5.	RERA Registered/ not registered	Not registered
UNIT DETAILS		
1.	Unit no. (originally allotted)	2_ S14 <ul style="list-style-type: none">The respondent unilaterally changed the unit four times without consent of complainant.
2.	Unit measuring	900 sq. ft.
3.	Date of Booking	21.03.2012
4.	Date of Buyer's Agreement	Not executed
PAYMENT DETAILS		
5.	Total sale consideration	Rs 58,01,108

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6. Amount paid by the complainant	Rs 11,53,384
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7. The respondent did not to file any reply to the complaint despite due service. On 26.02.2021, respondent was granted more time to file reply subject to payment of cost Rs 10,000, to be deposited with the Authority. The respondent failed to file reply and failed to pay the cost as imposed upon it. Accordingly, vide order dated 25.08.2021, defence of respondent was ordered to be struck off.
8. In the absence of any reply on behalf of respondent, contradicting plea taken by the complainant, claim of latter is presumed to have been admitted. As per complainant the respondent has changed the unit allotted to him five times unilaterally. From perusal of various emails annexed with the complaint, it is evident that complainant had objected change of unit and had even sought refund of his money. Despite various requests respondent failed to refund the same and kept on raising demands even without executing builder buyer's agreement.
10. In facts as stated above, complainant is entitled to get refund of his money with interest. Complaint in hands is thus, allowed and respondent is directed to refund amount received from the complainant i.e. Rs 11,53,384/- to the latter, within 90 days from today, along with interest @ 9.30% p.a. from the

date of each payment till its realisation. A cost of litigation etc, Rs 1,00,000 is also imposed upon respondent to be paid to complainant.

File be consigned to the Registry.

28.10.2021


(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 15.11.2021.