

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

Complaint no. : 1523 of 2018

Date of decision : 28.10.2021

ASHISH GARG
R/O : House No. 865,
Sector-15,
Part-II, Gurgaon

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

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28-10-21 Page 1 of 8



ORDER

1. This is a complaint filed by Sh. Ashish Garg (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 03.09.2012, he booked a commercial retail unit in respondent's project **Esfera Elvedor**, situated at sector-37 C, Gurugram and made payment of Rs 2,60,000 as booking amount. The respondent issued welcome letter dated 22.09.2012. Unit no. R -048 admeasuring 315 sq. ft. in Tower Rubix in said project Esfera Elvedor was allotted to him vide letter dated 30.04.2013. The respondent by issuing Provisional Allotment letter dated 11.01.2016 unilaterally changed the project and informed that unit No. R_ 048 in Tower Rubix has been allotted to him (complainant) in its (respondent's) another project named **37th Avenue** for a total consideration of Rs 31,92,914.
3. The respondent vide letter dated 11.01.2016 sent copy of a buyer's agreement followed by MoU dated 19.01.2016, comprising unilateral clauses. Accordingly, complainant vide letter dated 20.01.2016 returned the copy of builder buyer's agreement and MoU and requested for alteration and modification in the said MoU.



4. Despite providing revised builder buyers agreement, respondent issued another provisional allotment letter dated 13.09.2016 and allotted unit G-72. The respondent through letters dated 04.10.2016 and 09.03.2017 again sent MoU without making any changes . Instead of rectifying MoU the respondent, continued to raise fresh demand and changed the payment plan, without his (complainant's) consent .
5. The respondent does not possess requisite sanctions /approvals for construction of the project. The DTCP license bearing No. 51 of 2912 was issued in favour of Prime Time Solutions Pvt. Ltd and till date has not been transferred in favour of respondent and even said license has expired on 16.05.2018.
6. As per the payment plan opted by the complainant, he made timely payment of Rs 9,40,373. Even after the receipt of the said amount, the construction remained halted for a period of 2 years and when he (complainant) visited the site in August 2018, he found that no construction activity was going on.
7. There is no development in the project and construction activities have been stopped since 2016. Even after expiry of 6 years from the date of booking, neither license no. 51 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 and only rudimentary structure of one out of the several buildings has been erected on the project land. He (complainant) approached the respondent for refund of his money, but latter refused to entertain his request for refund.

8. Contending that the respondent has breached the fundamental term of the contract, by inordinately delaying the delivery of the possession, and by unilaterally changing the unit and payment plan of complainant, the complainant has sought refund of entire amount of Rs 9,40,373 paid by him till now, along with interest @ 18 % p.a. or at such rates as may be prescribed.
9. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	" 37 th Avenue in 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

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5.	RERA Registered/ registered	not	Not registered
UNIT DETAILS			
1.	Unit no. (originally allotted)	R_048	
2.	New unit no	G-72	
3.	Unit measuring	315 sq. ft.	
4.	Date of Booking	03.09.2012	
5.	Date of Buyer's Agreement	Not executed,	
PAYMENT DETAILS			
6.	Total sale consideration	Rs 31,92,914	
7.	Amount paid by the complainant	Rs 9,40,373	
8.	Payment Plan	Construction Plan	Linked

9. The case of respondent as set out in the written reply filed by it is that it (respondent) had allotted shop no. G-72 to the complainant in Tower 37th Avenue in project Elevador Retail vide allotment letter dated 30.04.2013. As per clause 11 (a) of agreement it is duly agreed by complainant, that the possession of said unit will be delivered within 60 months from the date of execution of buyer's agreement. It (respondent) intended to complete the construction of the subject unit on time. Even 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 include sudden outbreak of Covid 19. The Supreme Court of India banned construction activities vide its order dated November 2019, which was lifted completely only on 14th February 2020.

10. The construction activity was hit by the national lockdown which was imposed by the government of India on 24th March 2020, due to pandemic Covid -19 and the same affected construction activity. Moreover, every year during winters, NGT impose stay on construction activities due to serious air pollution. The real estate sector 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 in CWP No. 20032 of 2009 directed on 16.07.2012 to use only treated water from available sewerage treatment plants. Accordingly, only 10-15 % of required quantity of water was available at construction sites.
11. Moreover, as per Collaboration agreement dated 06.12.2012, entered between it (respondent) and M/s Prime IT Solutions Pvt. Ltd., the respondent became legally entitled to undertake construction and development of the project. Before said

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28/10/21



date of Collaboration Agreement, both the companies were under the same management and directors. The building plan 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. As per respondent, it is ready to compensate the complainant for delay in handing over possession, as per applicable rules.

12. 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. There is no denial that no buyer's agreement was executed between parties. In the absence of which, there was no written contract between them. Its not plea of anyone that parties had agreed on verbal terms. Further, from evidence of complainant it is established that respondent changed unit offered to complainant at its wish i.e. without consent of complainant. All this is not acceptable to complainant. Respondent did not deny that it received payment of Rs 9,40,373 as claimed by complainant.
15. It is claimed that respondent got DTCP license in 2012 and same has expired in the year 2016. The respondent did not

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file any document on record to establish that said license has been renewed or it has a valid license to carry out construction work now.

16. In circumstances as stated above, the respondent was duty bound to refund amount to complainant, when demanded by latter, which it failed to do without reasonable excuse.

17. The complaint in hands is thus allowed and respondent is directed to refund the amount received from the complainant i.e. Rs 9,40,373/- to the latter, within 90 days from date of this order, 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 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 22.11.2021.