

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

Complaint no. : 1650 of 2018

Date of decision : 12.10.2021

SEEMA KAPOOR
R/O : F-6/26,
Krishna Nagar,
New Delhi

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



1. This is a complaint filed by Ms. Seema Kappor (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 26.07.2012, she booked a studio apartment in respondent's project **Esfera Elvedor**, situated at sector-37 C, Gurugram and made payment of Rs 2,50,000 as booking amount. The respondent issued a confirmation letter dated 19.03.2013 wherein the allotted unit was mentioned as unit no. 3_ S19. The respondent unilaterally changed the unit to 3 _ A19 vide allotment letter dated 12.11.2013.. A buyer's agreement dated 31.01.2014, was executed between parties for unit No. 3 _ A19 in Tower Evita, admeasuring 436 sq. ft. for a total consideration of Rs 33,95,965 including BSP, PLC, EDC and etc.
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, she made timely payment of Rs 29,92,506/- i.e 88 % of entire sale agreed consideration along with miscellaneous and

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additional charges etc, but to her utter dismay, the possession of the apartment has not been offered as agreed in buyer's agreement.

5. Even after the receipt of 88 % of total consideration, the construction remained halted for a period of 2 years and when she (complainant) enquired about the progress of construction work, she 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 her 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

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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 29,92,506 paid by her 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
PROJECT DETAILS		
1.	Project name and location	" Esfera Elevador", 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	Not registered
UNIT DETAILS		
1.	Unit no.	No. 3 _ A19 (as per builder buyer agreement)
2.	Unit measuring	436 sq. ft.
3.	Date of Booking	26.07.2012
4.	Date of Buyer's Agreement	31.01.2014
5.	As per the Clause 11 (a) of buyer's agreement,	31.01.2019

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	respondent had agreed to deliver the possession of the unit within 60 months from the date of execution of buyer's agreement	(Calculated from the dated of agreement)
6.	Delay in handing over of possession till date	2 years 10 months
PAYMENT DETAILS		
7.	Total sale consideration	Rs 33,95,965
8.	Amount paid by the complainant	Rs 29,92,506
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 18.03.2018. 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 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 14th 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 24th 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

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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 orders.

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

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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 29,92,506 within 90 days from today, with interest @ 9.3 % p.a. from the date of each payment, till realisation of amount. A cost of 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 22.11.2021.