

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

Complaint no. : 1167 of 2021  
First date of hearing: 07.04.2021  
Date of decision : 30.09.2021

1. Smt. Shuchi Sur  
Address: C/O Northern Refrigeration  
Company, 32, Hazratganj, Lucknow, U.P-  
226001

**Complainant**

**Versus**

1. M/s Imperia Wishfield Pvt. Ltd.  
Regd. Office at: - A - 25, Mohan Co-operative  
Industrial Estate, Mathura Road, New Delhi -  
110044

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Vijay Kumar Goyal

**Member  
Member**

**APPEARANCE:**

Sh. Sukhbir Yadav (Advocate)  
None

Complainant  
Respondent

**EX- PARTE ORDER**

1. The present complaint dated 09.03.2021 has been filed by the complainant/allottee under section 31 of the Real Estate

(Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Project name and location	"Elvedor", Sector-37C, Gurugram
2.	Licensed area	2 acres
3.	Nature of the project	Commercial colony
4.	DTCP license no.	47 of 2012 dated 12.05.2012
	License valid up to	11.05.2016



	Licensee	Prime IT Solution Pvt. Ltd. and Davi Ram S/o Amar Singh
5.	RERA registered/not registered	Not registered
6.	Unit no.	10-A16, 10 <sup>th</sup> floor, Evita tower (annexure-P4 on page no. 54 of the complaint)
7.	Unit measuring	40.52 sq. mtr. (annexure-P4 on page no. 54 of the complaint)
8.	Date of booking	13.02.2013 (annexure- P5 on page no. 108 of the complaint)
9.	Date of allotment letter	30.09.2013 (annexure- P3 on page no. 42 of the complaint)
10.	Date of execution of retail buyer's agreement	04.07.2014 (annexure- P4 on page no. 44 of the complaint)
11.	Payment plan	Construction linked payment plan (annexure- P4 on page no. 82 of the complaint)
12.	Total consideration	Rs. 32,61,742/- (annexure- P5 on page no. 108 of the complaint)





13.	Total amount paid by the complainant	Rs.27,75,903/- (annexure- P5 on page no. 109 of the complaint)
14.	Possession clause	<b>11 (a)</b> The company based on its present plans and estimates and subject to all just exceptions endeavors to complete construction of the said building/said unit <b>within a period of sixty (60) months from the date of this agreement</b> unless there shall be delay or failure due to department delay or due to any circumstances beyond the power and control of the company or force majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the allottee(s) to pay in time the total price and other charges and dues/payments mentioned in this agreement or any failure on the part of the allottee(s) to abide by all or any of the terms and

		conditions of this agreement. (emphasis supplied)
15.	Due date of delivery of possession	04.07.2019  (Calculated from the date of execution of agreement)
16.	Offer of possession	Not offered
17.	Occupation certificate	Not obtained
18.	Delay in handing over possession till the date of decision i.e., 06.10.2021	2 years, 3 months and 2 days

#### B. Facts of the complaint

The complainant has submitted as under: -

3. That the respondent party Imperia Wishfield Pvt. Ltd. is a company incorporated under the Companies Act, 1956 having its registered office at A - 25, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi - 110044 and the project in question is known as "Elvedor", sector - 37C, Gurugram (hereinafter called the said 'project').
4. That in February 2013, the complainant received a marketing call from a real estate agent namely Mr. Anuj, who represented himself as an authorized agent of the respondent company and marketed a commercial project namely "Elvedor" situated at



sector -37C, Gurugram. The complainant visited the Gurugram office and project site of the respondent with her family members. There she met with the marketing staff of the respondent and got information about the said project. The marketing staff of the respondent gave her a brochure and pricelist and allured her with a shady picture of the project. The marketing staff of the respondent through a brochure and representations projected and assured that the project *"Imperia brings to you a lifestyle hub that combines four destinations into a single address. Presenting Elvedor - an architectural and conceptual masterpiece that seamlessly incorporates Offices, Residency, Retail, and Entertainment to give you a world where every wish fulfills itself in no time. A world where you are always at the center of everything"*. The marketing staff of the respondent assured to the complainant that possession of flat will be handover within 42 months of the booking.

5. That, believing on representation and assurance of respondent, the complainant, booked one studio bearing no. 10-A16 on 10<sup>th</sup> floor of tower envita for tentative size admeasuring 436 sq. ft. (Hereinafter referred as the said 'unit') and issued a cheque of Rs. 2,75,000/- vide cheque no. 000046 dated 09.02.2013, drawn on Kotak Mahindra Bank, for the





booking amount and signed a pre-printed application form. The respondent issued a payment receipt for the same on 20.02.2013. The studio was purchased under the construction linked plan for a sale consideration of Rs. 32,61,742/-.

6. That the respondent on 30.09.2013 issued an allotment letter in name of the complainant conforming to allotment of the said unit.
7. That after a long follow-up on 04.07.2014, a pre-printed, unilateral, arbitrary studio buyer's agreement (Hereinafter referred as the 'SBA') was executed inter-se the respondent and the complainant. According to clause 11(a) of the SBA, the respondent had to give possession of the said unit within a period of (60) months from this agreement. It is germane that the SBA was executed on 04.07.2014, hence, the due date of possession was 04.07.2019. That the complainant kept paying the demands raised by the respondent.
8. That as per the statement of account dated 21.09.2018, issued by the respondent, the complainant has paid Rs. 27,75,903/- i.e. more than 81% of total sale consideration till 20.06.2016.
9. That initially the said unit was booked in the name of Mr. Ashok Sur & Ms. Shuchi Sur but later on, Mr. Ashok Sur



- withdrew his name and the said unit remains in the name of Ms. Shuchi Sur (the complainant).
10. That, since 2019 the complainant was regularly visiting the office of the respondent party, as well as the construction site, and making efforts to get possession of the allotted unit but all in vain. Despite several visits and requests by the complainant, the respondent did not give possession of the said unit. The complainant has never been able to understand/know the actual state of construction. Though the towers seem to be built up, but there was no progress observed on finishing and landscaping work and amenities for a long time.
11. That the main grievance of the complainant in the present complaint is that despite the complainant paid more than 81% of the actual cost of the said unit and is ready and willing to pay the remaining amount (justified) (if any), the respondent party has failed to deliver the possession of said unit on the promised time and till date project is without amenities. Moreover, it was promised by the respondent party at the time of receiving payment for the said unit that the possession of a fully constructed unit and developed project shall be handed over to the complainant as soon as construction completes i.e. sixty (60) months from the execution of the SBA i.e. on 04.07.2019.





12. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent party and as such, he is liable to be punished and compensate the complainant.
13. That due to the acts of the above and the terms and conditions of the SBA, the complainant has been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.
14. That there are clear unfair trade practices and breach of contract and deficiency in the services of the respondent party and much more a smell of playing fraud with the complainant and others and is prima facie clear on the part of the respondent party which makes them liable to answer this authority.
15. That the cause of action for the present complaint arose in July 2019, when the respondent party failed to handover the possession of the said unit as per the agreement. The cause of action again arose on various occasions, including on: a) August 2019; b) Oct. 2020; c) December 2020, d) January 2021; and on many times till date, when the protests were lodged with the respondent party about its failure to deliver the project and the assurances were given by it that the



- possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this authority restrains the respondent party by an order of injunction and/or passes the necessary orders.
16. That the complainant does not want to withdraw from the project. The promoter has not fulfilled his obligation therefore as per obligations on the promoter under section 18(1) proviso, the promoter is obligated to pay the interest at the prescribed rate for every month of delay till the handing over of the possession.
17. That the present complaint is not for seeking compensation, without prejudice, the complainant reserves the right to file a complaint to adjudicating officer for compensation.

**C. Relief sought by the complainant:**

The complainant has sought following relief(s):

- i. Direct the respondent to handover the possession of the fully developed/constructed unit with all amenities.
- ii. Direct the respondent to pay delayed possession interest @ prescribed rate from the due date of possession till the actual date of possession (complete in all respect with all amenities).

18. The authority issued a notice dated 16.03.2021 of the complaint to the respondent by speed post and also on the given email address at info@imperiastructures.com. The delivery reports have been placed in the file. Despite service of notice, the respondent has preferred not to file the reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondent.
19. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**D. Findings on the relief sought by the complainant.**

**Relief sought by the complainant:** The complainant has sought following relief:

- i. Direct the respondent to pay delayed possession interest @ prescribed rate from the due date of possession till the actual date of possession (complete in all respect with all amenities).
20. In the present complaint, the complainant intends to continue with the project and are seeking delay possession charges as





provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

*.....*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

21. Clause 11(a) of the studio buyer's agreement provides the time period of handing over possession and the same is reproduced below:

*"11(a) Schedule for possession of the Said Unit  
The Company based on its present plans and estimates and subject to all just exceptions endeavors to complete construction of the Said Building/Said Unit within a period of sixty (60) months from the date of this agreement unless there shall be delay or failure due to department delay or due to any circumstances beyond the power and control of the Company or Force Majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the Allottee(s) to pay in time the Total Price and other charges and dues/payments mentioned in this Agreement or any failure on the part of the Allottee(s) to abide by all or any of the terms and conditions of this Agreement. In case there is any delay on the part of the Allottee(s) in making of payments to the Company then notwithstanding rights available to the Company elsewhere in this contract, the period for implementation of the project shall also be extended by*



*a span of time equivalent to each delay on the part of the Allottee(s) in remitting payment(s) to the Company."*

22. At the inception it is relevant to comment on the pre-set possession clause of the studio buyer's agreement wherein the possession has been subjected to innumerable terms and conditions, force majeure circumstances and innumerable terms and conditions. The drafting of this clause is not only vague but so heavily loaded in favour of the promoter that even a single default by the allottee in fulfilling obligations, formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
23. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession





charges. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

(1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

24. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
25. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 30.09.2021 is 7.30%. Accordingly, the





prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

26. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

27. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.

28. Section 19(10) of the Act obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. These 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 04.07.2019 till offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 19(10) of the Act
29. On consideration of the circumstances, the evidence and other records and submissions made by the party, the authority is satisfied that the respondents are in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 11 (a) of the studio buyer agreement executed between the parties on 04.07.2014, the possession of the subject apartment was to be delivered within stipulated time i.e., by 04.07.2019. Therefore,



the due date of handing over possession is 04.07.2019. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent to fulfil its obligations and responsibilities as per the studio buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 04.07.2019 till the offer of possession after obtaining occupation certificate or the handing over of possession, whichever is earlier at prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules and section 19 (10) of the Act of 2016.

**E. Directions of the authority**

30. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay



from the due date of possession i.e.,04.07.2019 till the offer of possession after obtaining occupation plus two months or the handing over of possession, whichever is earlier.

- ii. The arrears of such interest accrued from 04.07.2019 till date of this order shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be payable by the promoter to the allottee before 10<sup>th</sup> day of each subsequent month as per rule 16(2) of the rules.
- iii. The respondent is directed to handover the physical possession of the subject unit after obtaining OC from the competent authority.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

vi. The respondent shall not charge anything from the complainant which is not the part of the agreement.

31. Complaint stands disposed of.

32. File be consigned to registry.

  
(Samir Kumar)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 30.09.2021

Judgement uploaded on 09.12.2021.

**HARERA**  
**GURUGRAM**