

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

**Complaint no.** 1167 of 2018  
**Date of First hearing** 12.03.2019  
**Date of decision** 12.03.2019

Sh. Badan Singh Chauhan  
R/o D-884, Mohalla-Moosaaka, Village-  
Allika, Tehsil/Post/Distt.- Palwal,  
Haryana, Pin-121102

**...Complainant**

Versus

M/s Imperia Wishfield Pvt. Ltd.  
Office at: A-25, Mohan Co-operating  
Industrial Estate, New Delhi-110044

**...Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Sh. Badan Singh Chauhan Complainant in person  
Sh. Ishaan Dang Advocate for the respondent  
Sh. Rajender Kumar Assistant Legal Manager on  
behalf of respondent company



**ORDER**

1. A complaint dated 25.10.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and

Development) Rules, 2017 by the complainant Sh. Badan Singh Chauhan against the promoter M/s Imperia Wishfield Pvt. Ltd. in respect of unit described below in the project 'Elvedor', on account of non-fulfilment of obligations of the promoter under section 11(4)(a) of the Act ibid.

2. Since the booking was made on 21.03.2012, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Elvedor" in Sector 37-C, Gurugram
2.	Nature of real estate project	Commercial complex
3.	Project area	2 acres
4.	Unit no.	2_S14, 2 <sup>nd</sup> floor, tower 'B' <b>Note: This is a peculiar case wherein the unit and project was changed several times.</b>
5.	Unit area	900 sq. ft. (as per welcome letter dated



		31.07.2012)
6.	Registered/ not registered	<b>Not registered</b>
7.	DTCP license	47 of 2012 dated 12.05.2012 <b>Note: License bearing no. 47 of 2012 expired on 11.05.2016</b>
8.	Date of booking	21.03.2012
9.	Date of unit allotment letter	21.03.2013 <b>Note: The complainant was allotted 4 different units by the respondent unilaterally vide letter dated 21.03.2013, 02.02.2015, 06.10.2016, 23.01.2017.</b>
10.	Date of buyer's agreement	<b>No BBA has been executed between the parties</b>
11.	Total consideration	Rs.58,01,108/- (as per applicant file dated 28.11.2015, pg 50 of the complaint)
12.	Total amount paid by the complainant	Rs. 11,53,384/- (as per applicant file dated 28.11.2015, pg 51 of the complaint)
13.	Payment plan	Construction linked plan
14.	Date of delivery of possession	<b>Cannot be ascertained</b>
15.	Delay of number of months/ years	<b>Cannot be ascertained</b>
16.	Penalty clause as per buyer's agreement	<b>Cannot be ascertained</b>



4. The details provided above have been checked on the basis of the record available in the case file. No buyer's agreement is available on record. Neither the respondent has delivered the possession of the said nor have they paid any compensation. Therefore, the promoter has not fulfilled his committed liability as on date.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 12.03.2019. The reply has not been filed by the respondent till date even after service of three notices consecutively for the purpose of filing reply. Hence, ex-parte proceedings had been initiated against the respondent. However, on the date of hearing on 12.03.2019, the respondent appeared through his counsel and assistant legal manager.

#### **Facts of the complaint**

6. On 21.03.2012, the complainant booked a studio apartment admeasuring 825 sq. ft. in tower 'Rubix' in the project named 'Esfera Elvedor' by paying an advance amount of Rs 4,00,000/- to the respondent. Accordingly, the complainant was allotted a unit bearing no. 2\_S14 on 2<sup>nd</sup> floor in tower 'B'



vide letter dated 21.03.2013. It is further submitted that vide letter dated 31.07.2012, the area of the said unit was increased to 900 sq. ft.

7. The complainant submitted that out of the total basic sale consideration, the complainant paid total amount of Rs.11,53,384/- as demanded by the respondent.
8. The complainant submitted that in the year 2013, builder buyer agreement was signed by him but the developer kept it with him saying that the same will be sent back after duly getting signed by the developer. However, till date, the complainant has not received the executed agreement.
9. The complainant further submitted that the developer has changed the booked unit and project four times after first allotment without his consent.
  - First time the allotment was for unit no. 2\_S14 on 2<sup>nd</sup> floor in tower 'B' Rubix on 21.03.2013, one year after booking.
  - Second time the allotment was for unit no. 6\_A14 on 6<sup>th</sup> floor in tower 'Evita' on 02.02.2015 after 2 years of first allotment.



- Third time the allotment was for unit no. 5 S05 in project '37<sup>th</sup> Avenue' on 06.10.2016, after 5.5 months of third allotment. Vide this letter, it was stated that the additional charges will be Rs.11,00,858/-.
  - Fourth time the allotment was made on 23.01.2017 that changed the nature of the unit and the project stating that serviced suite in 37<sup>th</sup> Avenue is now a hotel named 'Hotel Svenska'.
  - Fifth time vide letter dated 05.06.2018, the said unit was mentioned as unit no. 5\_S05 in 37<sup>th</sup> Avenue.
10. The complainant submitted that vide letters dated 05.01.2016 and 05.06.2018, demand letters were sent but the same were not paid by him and he replied to the developer vide letter dated 19.05.2018.
11. The complainant further submitted that for refund of the deposited money, he has been writing to the developer repeatedly by emails, letters and also intimating on phone to the concerned. But the developer did not respond. Thereafter, on 18.01.2016, the complainant sent a legal notice for refund of the deposited amount, but no reply was given by the developer.





12. The complainant submitted that the developer gave many false assurances. Firstly, at the time of booking, the complainant was assured that the unit will be ready within 3 years but till date even after a gap of more than 6 years, the unit is not ready. Secondly, the agreement was not executed by the developer. Thirdly, as mentioned above, the unit was allotted five times. Fourthly, the developer never informed about the license number and required approvals of the said unit/tower/project in question.

**13. Issues to be determined**

The relevant issues as culled out from the complaint are as follows:

- I. Whether the complainant is entitled to refund of the principal amount of Rs.11,53,384/- paid by him to the respondent along with interest?

**14. Relief sought**

- I. Direct the respondent to refund the amount of Rs.11,53,384/- due, along with the interest.

**Determination of issues**

No reply has been filed by the respondent. After considering the facts submitted by the complainant and perusal of record



on file, the case is proceeded ex-parte and the authority decides the issues raised by the parties as under:

15. With respect to the **sole issue**, no builder buyer agreement has been executed between the parties. The booking of the unit was made on 21.03.2012 and till date, the possession has not been handed over to the complainant. The complainant has already paid Rs.11,53,384/- to the respondent as against the total consideration of Rs.58,01,108/-. Keeping in view the intervening circumstances and the interest of other allottees, the authority is of the view that the complainant is entitled to delayed possession charges at the prescribed rate of 10.75% per annum w.e.f. 21.03.2018 (60 months from date of allotment letter) till the offer of possession.

16. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as per section 11 of the Act *ibid*.

The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

17. The complainant reserves his right to seek compensation from the promoter for which he shall make separate





application to the adjudicating officer, if required.

### Findings and directions of the authority

18. **Jurisdiction of the authority-** The authority has complete territorial jurisdiction to entertain the present complaint. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in *Simmi Sikka v/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

19. As required by the authority, the respondent has to file reply within 10 days from the date of service of notice. Additional time period of 10 days is given on payment of a penalty of Rs.



5,000. Subsequent to this, last opportunity to file reply within 10 days is given on payment of a penalty of Rs. 10,000.

20. Such notices were issued to the respondent on 26.10.2018 and on 29.11.2018 and on 17.12.2018. Further, a final notice dated 26.02.2019 by way of email was sent to both the parties to appear before the authority on 12.03.2019.

21. The possession was to be handed over to the complainant within a period of 60 months from the date of allotment letter dated 21.03.2013 and due date comes to be 21.03.2018. However, the respondent has not delivered the unit in time. As such, the complainant is entitled to delayed possession charges at the prescribed rate of 10.75% per annum w.e.f. 21.03.2018 (60 months from date of allotment letter) till the offer of possession as per provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016.

#### **Decision and directions of the authority**

22. The authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent:

I. The respondent is directed to pay the interest at the prescribed rate i.e. 10.75% per annum for every month of



delay on the amount paid by the complainant from due date of possession till the actual offer of possession.

- II. The respondent is directed to pay interest accrued from 21.03.2018 (due date of possession) to 12.03.2019 (date of this order) on account of delay in handing over of possession to the complainant within 90 days from the date of issuance of this order.
- III. Thereafter, the monthly payment of interest till the offer of possession shall be paid on or before 10<sup>th</sup> of each subsequent month.
- IV. Since the project is not registered, notice under section 59 of the Real Estate (Regulation and Development) Act, 2016 for violation of section 3(1) of the said Act be issued to the respondent. Registration branch is directed to do the needful.
23. The complaint is disposed of accordingly.
24. The order is pronounced.
25. Case file be consigned to the registry.



**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 19.03.2019

Judgement uploaded on 08.04.2019