

**PROCEEDINGS OF THE DAY**

Day and Date	Wednesday and 06.02.2019
Complaint No.	1438/2018 Case Titled As Vishal Arora V/S M/S Imperia Wishfield Pvt Ltd
Complainant	Vishal Arora
Represented through	Shri Parikshit Kumar, Advocate for the complainant
Respondent	M/S Imperia Wishfield Pvt Ltd
Respondent Represented through	Shri Rohit Sharma, authorized representative on behalf of respondent-company with S/Shri J.K. Dang and Ishaan Dang, Advocates for the respondent.
Last date of hearing	3.1.2019
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

**Respondent has applied online for registration.**

Arguments heard.

Report of Local Commissioner dated 30.1.2019 has been received and the same has been placed on record. The operative part of report of Local Commissioner is as under:-

***“For project ‘ELVEDOR’ o 2.00 acres land being developed by M/s Imperia Wishfield Pvt Ltd.***

***Since the estimated cost and expenditure incurred figures are available for the project ‘ELVEDOR’ being developed by M/s Imperia Wishfield Pvt. Ltd the overall progress of the project ‘ELVEDOR’ has been assessed on the basis of expenditure incurred and actual work done at site on 24.1.2019. Keeping in view above facts and figures, it is reported that the work has been completed***

***with respect to financially is 42.20% whereas the work has been completed physically is about 30% approximately.***

***For project '37<sup>th</sup> AVENUE on 4.00 acres land being developed by M/s Imperia Wishfield Pvt. Ltd.***

***Since the estimate cost and expenditure incurred figures are available for the project '37<sup>th</sup> AVENUE' being developed by M/s Imperia Wishfield Pvt. Ltd. The overall progress of the project '37<sup>th</sup> AVENUE' has been assessed on the basis of expenditure incurred and actual work done at site on 24.01.2019. Keeping in view above facts and figures, it is reported that the work has been completed with respect to financially is 15.70% whereas the work has been completed physically is about 5% approximately".***

Counsel for the respondent has raised certain controversial issues w.r.t. ownership of the land which is in the name of Devi Ram who had entered into an agreement with Prime IT Solutions Pvt.Ltd and thereafter Prime IT Solutions Pvt.Ltd has entered into an agreement to develop the project with M/S Imperia Wishfield Pvt. Ltd.

There were certain legal wranglings inter-se all the three parties mentioned above. However, vide judgment dated 21.1.2016 passed in civil suit No.149 SK by Shri Sanjeev Kajla, Civil Judge, Gurgaon, the matter has been settled inter-se all the three parties and as a matter of fact entries w.r.t. land dispute have been correctly entered in the mutation and jamabandi record, as such there is no dispute w.r.t. ownership of land.

By virtue of allotment letter dated **26.9.2013**, the possession was to be handed over to the complainant within a period of 60 months which comes out to be 25.9.2018. As such, the complainant is entitled to get interest for the delayed period @ 10.75% per annum w.e.f. **25.9.2018** as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

It has been averred by counsel for the respondent that they have applied for transfer of licence with DTCP and registration of project with RERA authority. As per the registration application, the revised date of delivery of possession is March 2020.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10<sup>th</sup> of subsequent month.

The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar  
(Member)  
6.2.2019

Subhash Chander Kush  
(Member)

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

**Complaint no. : 1438 of 2018**  
**First date of hearing: 03.01.2019**  
**Date of decision : 06.02.2019**

Mr. Vishal Arora  
R/o C-30, varun apartments,  
Sector 9, Rohini, delhi

**Complainant**

Versus

M/s Imperia Wishfield Pvt. Ltd  
A-25, Mohan Cooperative Industrial Estate,  
New Delhi

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Parikshit Kumar Advocate for the complainant  
Shri J.K. Dang and Ishaan Dang Advocate for the respondent  
Shri Rohit Sharma Authorized representative on  
behalf of respondent-company

**ORDER**

1. A complaint dated 22.10.2018 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 Mr. Vishal Arora, against the promoter M/s Imperia wishfield Pvt. Ltd. for unit no. 8- A03 ,in the project namely Esfera Elvedor located at sector 37C , Gurugram.

2. The particulars of the complaint case are as under: -

1.	Name and location of the project	The Esfera Elvedor, sector 37 C , Gurugram
2.	Nature of the project	Commercial colony
3.	DTCP no.	51 of 2012
4.	RERA registered/ not registered	<b>Not registered</b>
5.	Unit no.	8-A03
6.	Unit measuring	659 sq. ft.
7.	Payment plan	Construction linked linked payment plan
8.	Date of execution of buyer's agreement	26.09.2013
9.	Total consideration as alleged by the complainant	Rs. 45,80,210 /-
10.	Total amount paid by the complainant till	Rs. 8,66,188/-
11.	Date of delivery of possession	25.09.2018



3. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. A buyer's agreement is not executed.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent through his counsel appeared on 03.01.2019. The case came up for hearing on 03.01.2019 and 06.02.2019. The reply has been filed by respondent has been perused.

#### **Facts of the case**

5. The complainant submitted that an vide application form dated 30.03.2012, he applied for allotment of one studio apartment in the project namely Elvedor having super area of 625 sq. ft. In terms of the application form, the complainant was required to remit payments in accordance with a construction linked plan as set out therein.
6. The complainant submitted that he has paid booking amount of Rs. 3,00,000/- vide cheque bearing no. 762259 dated 20.03.2012. Pursuant to this payment, the respondent issued a receipt dated 30.03.2012 (printed on 07.08.2012) for the booking amount. The respondent also issued an acknowledgement dated 21.05.2012 wherein the respondent accepted the application form and acknowledged the booking of a studio apartment in project "Elvedor" measuring 625 sq.



ft. at the basic price of Rs. 5,100/- in the construction linked plan.

7. The complainant submitted that respondent had not issued any allotment letter till this point in time nor provided any buyers agreement, however, the respondent issued a demand letter dated 22.05.2012 calling upon the complainant to pay a further amount of Rs. 5,21,498 towards booking.
8. The complainant submitted that in compliance with the demand as above, the complainant issued two cheques dated 30.07.2012 and 08.09.2012 for a sum of Rs. 2,50,000/- and Rs. 2,81,540/- to the respondent. The respondent acknowledged receipt of the amounts vide 2 receipts dated 18.09.2012.
9. The complainant submitted that respondent again issued a demand letter dated 17.11.2012 calling upon the complainant to pay a further sum of Rs. 34,648/-. Such additional charge had occurred since the respondent had unilaterally increased the area of the studio apartment from 625 sq. ft. to 659 sq. ft.
10. The complainant submitted that he protested against such unilateral changes to which he has not consented. However, the complainant after several discussions and to avoid any



penal interest was constrained to make an additional payment of Rs. 34,648/- vide a cheque bearing no. 069365 dated 08.01.2013.

11. The complainant submitted that however, subsequent to receipt of 25% of the basic price as booking amount and for a period of 3 years thereafter, the tower in which the complainant had booked was nowhere in site and consequently, the complainant was constrained to write an email dated 20.04.2015 seeking information as to why the booking amount has been lying with the respondent for so long when in fact no construction had commenced. The complainant also specifically stated that no buyer's agreement had been provided till date and consequently, the respondent had been enjoying the moneys for 3 years without any basis.

12. The complainant submitted that in response to the said email, the respondent vide email dated 20.04.2015, admitted that construction of the tower in which the complainant had invested not commenced even after expiry of 3 years and on this reason alone the respondent had not provided the buyers agreement. The respondent further falsely claimed that the





construction would start in 2 months and the buyers agreement will be provided. On the same day, the complainant responded to the respondent stating that project is already delayed by 3 years and consequently some compensation ought to be paid to the complainant. However, no response was received.

13. The complainant submitted that he repeatedly sent email reminders to the respondent. In response to one such email, the respondent further stated that expected time of delivery is October 2018. Further, vide an email dated 14.08.2015, the respondent stated that the construction was to be handed over in 5 years with a grace period of 6 months and consequently the respondent claimed to be in compliance with the agreement. It is pertinent to note that even if the respondent's case is taken to the highest even till date construction activity is nowhere near completion. The complainant being wary of the respondent's intentions in response to such emails requested for a refund of the booking amount.

14. The complainant submitted that on 05.01.2016, the respondent issued another demand letter calling upon the



complainant to pay further amounts at the start of excavation.

It is pertinent to note that no buyer agreement was executed even after more than 3 years from the date of booking. Further, the respondent had raised a demand letter without providing any builder buyer agreement which was contrary to its own assurances that once builder buyer agreement will be provided once the construction commences.

15. The complainant submitted that realising the fraud and misrepresentations of the respondent, the complainant was constrained to cause the issuance of a legal notice dated 15.04.2016 calling upon the respondent to refund the amounts which had been invested.

16. The complainant submitted that he instituted a consumer complaint before the Id. district forum, Gurgaon. However, after substantial hearings, the complaint was returned for want of pecuniary jurisdiction in view of the judgment of the Hon'ble National Commission that the total value of the flat shall be the basis for determining the pecuniary jurisdiction of the consumer forum.



17. The complainant submitted that construction activities had also come to a halt during this period, the complainant started making enquiries in relation to the project and it was discovered that the respondent did not have the requisite licenses to undertake construction.

18. The complainant submitted that even after expiry of 6 years from the date of booking, till date only a rudimentary structure of one out of the several buildings forming part of the project has been erected on the project land which is incapable of possession. Additionally, the complainant's tower is not even in existence and there is no other development on the project land for last two years and the construction activities have been stopped. It is pertinent to note that even as per the assurances of the respondent vide email annexed above, it is evident that the respondent even till date is not in a position to given possession.

19. In view of the foregoing facts, the complainant has instituted the instant complaint before this Hon'ble authority.



### Issues to be decided

- i. Whether the respondent has misrepresented to the complainant that it has the necessary sanctions and approvals in place to undertake construction of the proposed project?
- ii. Whether the respondent has abandoned the project and consequently is liable to refund the amounts along with interest to the complainant?
- iii. Whether the respondent has failed to provide possession of the unit in question without any reasonable justification?
- iv. Whether the respondent has undertaken construction of the proposed project in accordance with any sanctioned plans which have been duly approved?
- v. Whether the respondent has any authority to undertake construction or sale of the project in question at the time of receiving booking amount or instalments from the complainant?

### Relief sought:

In view of the facts above-mentioned, the Complainant prays that this Hon'ble Authority may be pleased to:

- (i) Pass appropriate directions to the respondent directing a refund of the amount of Rs. 8,66,188/-.



- (ii) Pass appropriate directions directing the respondent to pay interest at the rate of 18% p.a. or at such rates as may be prescribed on the amount of Rs. 8,66,188/- from the date of deposit till the date of actual receipt;

### **Respondent's reply**

20. The respondent has denied each and every allegations and contentions raised by the complainant. They contended that the complaint is false, frivolous, malafide and an abuse of process of this authority. It was further contended by the respondent that the complainant has not approached this authority with clean hands.

21. The respondent has submitted that the construction has been delayed due to force majeure circumstances beyond the control of the respondents. It was further submitted by the respondent that M/s. Prime IT Solutions P. Ltd. entered into a development agreement on 06.12.2011 and the same was duly registered. In furtherance of the development agreement, an application for grant of license by DTCP was submitted by M/s. Prime IT Solutions P. Ltd. and developer had executed a term sheet which took the shape of the collaboration agreement.



22. The respondent submitted that a general power of attorney was also executed by M/s. Prime IT Solution in favour of developer which was also registered on 19.03.2012. It was further submitted by the respondent that they had obtained all necessary permissions and sanctions for the commercial project in question.

23. The respondent submitted that they got letter of intent on 24.05.2011 and subsequently license no. 47 of 2012 and license no. 51 of 2012 was granted on 12.05.2012 and 17.05.2012. Further the building plan was also sanctioned.

24. The respondent has submitted that they had filed a suit titled Imperia wishfield P. Ltd. versus Prime IT Solution P. Ltd. whereby the relief of declaration alongwith consequential relief of permanent injunction against the Prime IT Solution P. Ltd. and landowners. The hon'ble civil court has passed the order in the shape of compromise decree in and issued direction to prepare the decree sheet accordingly. The decree sheet judgement and sanctioning of mutation no. 2117 for transfer of the ownership of project land to imperia wishfield P. Ltd. was declared the owner of the property in question.



25. The respondent by virtue of acts in law, above permissions and court decree have become the absolute right to market, sell, allot plots, etc. and as such became competent to enter into agreements.
26. The respondent submitted that the construction at the site is being done in phase and in going on full swing. It was further submitted by the respondent that the complainant is bound by the terms of the application form and therefore the dispute if any falls within the ambit of civil dispute and all other allegations levelled by the complainant are false and baseless.

#### **Determination of issues**

27. In respect of **first issue** raised by the complainant, complainant has failed to furnish any concrete proof in order to establish any misrepresentation on the part of the respondent regarding necessary sanctions and approvals in order to carry out construction. Thus, this issue is decided in negative.
28. In respect of **second issue** raised by the complainant, as per the report of the local commissioner, the project is 42.20% financially completed and 30% of physical work has been



completed. However, as the due date of possession i.e. 04.02.2020 has not been crossed and complaint remains premature, therefore, refund cannot be allowed at present stage.

29. In respect of **third issue** raised by the complainant, by virtue of allotment letter dated 26.09.2013, the possession was to be handed over to the complainant within a period of 60 months which comes out to be 25.09.2018. As such, the complainant is entitled to get interest for the delayed period @ 10.75% per annum w.e.f. 25.09.2018 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession

30. In respect of **fourth and fifth issue** raised by the complainant, the complainant has not furnished any documentary proof in order to firmly ascertain whether the construction was carried out in accordance with the sanctioned plans and approvals or whether the respondent, in the first place, had any authority to undertake construction or sale of the project in question. However, it is clear from the records that DTCP license has already expired on 11.05.2016 and it is nowhere stated by the





respondent in their reply that they have applied for renewal of said license.

### Findings of the authority

31. The authority has complete subject matter 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 complainants at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town & Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

32. **Report of local commissioner:** The local commissioner was appointed in the project named 'Elvedor' to ascertain the status of the project. In the report, it is submitted that the complainant has applied for commercial unit in the building of



commercial colony measuring 2.00 acres approved by DTCP, Haryana Chandigarh vide license no. 47 of 2012 dated 12.05.2012 was issued in favour of Prime I.T Solutions Pvt. Ltd. and others in Sector 37-C, Gurugram.

33. That neither license nor building plan was approved by Director General Town & Country Planning, Haryana, Chandigarh in favour of M/s Imperia Wishfield Pvt. Ltd.

34. That since the estimated cost and expenditure incurred figures are available for the project 'Elvedor' being developed by M/s Imperia Wishfield Pvt. Ltd. The overall progress of the said project has been assessed on the basis of expenditure incurred and actual work done at site on 24.01.2019. Keeping in view above facts and figures, it is reported that the work has been completed with respect to financially is 42.20% whereas the work physically completed is about 30% approximately.

35. **Objections raised on behalf of the respondent to the report of local commissioner:** The respondent submitted that inspection in the present case was conducted by the local commissioner on 24.01.2019. However, from the very inception, the attitude/conduct of the local commissioner was



completely biased and prejudiced. The local commissioner completely lacked the competence and capability expected/required for physical verification of status of construction and appreciation of sanctions/permissions granted by the concerned statutory authority in relation to the project.

36. The respondent submitted that the officials of the respondent had tried their level best to assist the local commissioner, but for reasons best known to the local commissioner, he was not at all receptive and/or inclined to listen to valid submissions sought to be made by them. Consequently, the report submitted by the local commissioner is absolutely illegal, unfair, biased, factually incorrect and does not serve the purpose for which the local commissioner had been appointed.

37. The respondent submitted that the report submitted by the local commissioner is contrary to the actual state of affairs prevailing at the spot. It has been illogically and irrationally contended by the local commissioner that neither the license nor building plan had been approved by Director General,



Town and Country Planning, Haryana, Chandigarh in favour of the respondent.

38. The respondent submitted that the concerned statutory authority had also granted Environmental Clearance for the project on 06.11.2012. The building plans for the project had also been sanctioned by the concerned statutory authority. Other requisite permissions/clearances were also granted for the project. That in the mean time differences had arisen between Prime I T Solutions Private Limited, respondent and Mr. Devi Ram (land owner). The same had culminated in institution of suit for declaration with consequential relief of permanent injunction titled "*Imperia Wishfield Private Limited versus Prime IT Solutions Private Limited and others*".

39. The respondent submitted that judgment dated 21.01.2016 (Annexure RA) had been passed by Mr. Sanjeev Kajla the then Civil Judge, Gurgaon whereby the respondent had been declared to be absolute owner in exclusive possession of project land. The passing of judgment referred to above had been duly reported to the concerned revenue authorities and mutation bearing number 2117 (Annexure RB) had been



sanctioned on the basis of judgment and decree referred to above. In this manner, the respondent had become full-fledged and lawful owner in possession of the project site.

40. The respondent submitted that in the meantime differences had arisen between Prime I T Solutions Private Limited, respondent and Mr. Devi Ram (land owner). The same had culminated in institution of suit for declaration with consequential relief of permanent injunction titled “Imperia Wishfield Private Limited versus Prime IT Solutions Private Limited and another”.
41. The respondent submitted that judgment dated 21.01.2016 (annexure RC) had been passed by Mr. Sanjeev Kajla the then Civil Judge, Gurgaon whereby the respondent had been declared to be absolute owner in exclusive possession of project land. The passing of judgment referred to above had been duly reported to the concerned revenue authorities and mutation bearing number 2116 (annexure RD) had been sanctioned on the basis of judgment and decree referred to above. In this manner, the respondent had become full-fledged and lawful owner in possession of the project site.



42. The respondent submitted that the fact of passing of judgment referred to above was duly reported to the office of Director General, Town & Country Planning, Haryana, Chandigarh. The matter is pending for consideration with the aforesaid statutory authority for transfer of licence in favour of the respondent in furtherance of judgements/decrees referred to above. All these facts were brought to the attention of the local commissioner.
43. The respondent submitted that the officials of the respondent had even offered to supply photocopies of all the documents referred to above to the local commissioner. It was also specifically pointed out to the local commissioner that the fact of passing of judgments/decrees had been mentioned in the reply filed by the respondent. However, for reasons best known to the local commissioner, he was simply not inclined to hear anything in this regard or even to accept or consider documents.
44. The respondent submitted that as a consequence an erroneous and flawed observation is contained in the report submitted by the local commissioner that the licence/building plans are



not in favour of the respondent. In fact, if the entire factual matrix of the case had been considered in the correct perspective, this illegal observation would not have been made by the local commissioner. Consequently, it is evident that the observation of the local commissioner referred to above is contrary to record and deserves to be disregarded/ignored.

45. The respondent submitted that on the basis of erroneous observations completely contrary to facts, a grossly illegal conclusion was drawn in the end of his report by the local commissioner. It was wrongly and illegally held by the local commissioner that in the execution of "Elvedor" project, work had been completed with respect to 30% of the total area although financially 42.2% component had been allegedly realised by the respondent. In fact, structure of the project stands almost completed at the spot.

46. The respondent specifically refutes the correctness of this calculation. The same is arbitrary, whimsical and lacks any rational. It had been brought to the attention of the local commissioner that substantial expenditure had been incurred



by the respondent in making payment to the landowners/  
Prime IT Solutions Private Limited and also in payment of  
external development charges, infrastructure development  
charges.

47. That it was further brought to the attention of the local  
commissioner by the officials of the respondent that before  
determining the quantum of finance collected and the extent  
of work done, the aforesaid components of expenditure  
incurred by the respondent should be legitimately taken into  
account. However, for reasons best known to the local  
commissioner, the same has not been done.

48. Keeping in view the facts and circumstances of the complaint  
and submissions made by the parties during arguments, the  
authority has decided to observe that report of local  
commissioner dated 30.1.2019 has been received and the  
same has been placed on record. The operative part of report  
of local commissioner is as under: -

***“For project ‘ELVEDOR’ o 2.00 acres land being developed by M/s  
Imperia Wishfield Pvt Ltd.***

***Since the estimated cost and expenditure incurred figures are  
available for the project ‘ELVEDOR’ being developed by M/s  
Imperia Wishfield Pvt. Ltd the overall progress of the project  
‘ELVEDOR’ has been assessed on the basis of expenditure incurred***





***and actual work done at site on 24.1.2019. Keeping in view above facts and figures, it is reported that the work has been completed with respect to financially is 42.20% whereas the work has been completed physically is about 30% approximately.***

***For project '37<sup>th</sup> AVENUE on 4.00 acres land being developed by M/s Imperia Wishfield Pvt. Ltd.***

***Since the estimate cost and expenditure incurred figures are available for the project '37<sup>th</sup> AVENUE' being developed by M/s Imperia Wishfield Pvt. Ltd. The overall progress of the project '37<sup>th</sup> AVENUE' has been assessed on the basis of expenditure incurred and actual work done at site on 24.01.2019. Keeping in view above facts and figures, it is reported that the work has been completed with respect to financially is 15.70% whereas the work has been completed physically is about 5% approximately".***

49. Counsel for the respondent has raised certain controversial issues w.r.t. ownership of the land which is in the name of Devi Ram who had entered into an agreement with Prime IT Solutions Pvt. Ltd. and thereafter Prime IT Solutions Pvt. Ltd. has entered into an agreement to develop the project with M/S Imperia Wishfield Pvt. Ltd.

50. There were certain legal wranglings inter-se all the three parties mentioned above. However, vide judgment dated 21.1.2016 passed in civil suit No.149 SK by Shri Sanjeev Kajla, Civil Judge, Gurgaon, the matter has been settled inter-se all the three parties and as a matter of fact entries w.r.t. land dispute have been correctly entered in the mutation and



jamabandi record, as such there is no dispute w.r.t. ownership of land.

51. By virtue of allotment letter dated 26.09.2013, the possession was to be handed over to the complainant within a period of 60 months which comes out to be 25.09.2018. It has been averred by counsel for the respondent that they have applied for transfer of licence with DTCP and registration of project with RERA authority. As per the registration application, the revised date of delivery of possession is March 2020.

#### **Directions of the authority**

52. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby directs

- i. The respondent is directed to pay interest for the delayed period @ 10.75% per annum w.e.f. 25.09.2018 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order



and thereafter monthly payment of interest till offer of possession shall be paid before 10<sup>th</sup> of subsequent month.

- iii. The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.

53. The order is pronounced.

54. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated: 04.12.2018

Judgement Uploaded on 14.02.2019

HARERA  
GURUGRAM

