

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 06.02.2019
Complaint No.	1234/2018 Case Titled As Monika Bansal V/S M/S Imperia Wishfield Private Limited
Complainant	Monika Bansal
Represented through	Shri Parikshit Kumar, Advocate for the complainant
Respondent	M/S Imperia Wishfield Private Limited
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	30.1.2019
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 '37th 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 '37th AVENUE' being developed by M/s Imperia Wishfield Pvt. Ltd. The overall progress of the project '37th 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 12.9.2013, the possession was to be handed over to the complainant within a period of 60 months which comes out to be 11.9.2018. As such, the complainant is entitled to get interest for the delayed period @ 10.75% per annum w.e.f. 11.9.2018 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 10th 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. : 1234 of 2018
First date of hearing : 30.01.2019
Date of decision : 06.02.2019

Mrs. Monika Bansal
H.no. 324/12, Khatarian Street, near
mandir, Karnal-132001

Complainant

Versus

M/s Imperia Wishfield Pvt. Ltd.
Registered office : A-25, Mohan Co-opt.
Industrial Estate, Mahtura Road, New Delhi.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

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

ORDER

1. A complaint dated 09.10.2018 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 Mrs. Monika Bansal against the promoter M/s Imperia Wishfield Pvt. Ltd. on account of not delivering the possession of the booked



studio apartment/unit no. 3-S02 on the 3th floor tower B admeasuring 436 sq. ft. in the project namely “Elvedor”, located at Sector 37 C, Gurugram. in respect of said unit described below in the project ““Elvedor” at Sector 37C, Gurugram’, on account of violation of the section 11(4)(a) of the Act ibid.

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

- **Nature of the project – Commercial colony**
- **DTCP License no.- 47 of 2012 dated 12.05.2012**
- **License valid/renewed up to- 11.05.2016**
- **License holder- M/s Prime IT Solutions Pvt. Ltd.**

1.	Name and location of the project	“Elvedor” at Sector 37C, Gurugram
2.	Nature of real estate project	Commercial project
3.	Project area	2 acres
4.	Unit no.	3-S03 on the 3 th floor tower B
5.	Unit area	436 sq. ft
6.	DTCP license	47 of 2012
7.	Registered/ un registered	Not registered
8.	RERA registration no.	Not applicable
9.	Date of studio apartment buyer agreement	Not executed



10.	Total sale consideration	Rs. 33,95,965/- as per statement of complainant
11.	Total amount paid by the complainant	Rs. 6,45,756/- as per demand letter dated 06.06.2018
12.	Payment plan	Construction linked plan
13.	Date of delivery of possession	11.09.2018
14.	Delay of number of months/ days	4 months and 26 days
15.	Penalty clause	Cannot be ascertained

3. The details provided above have been checked as per the case file available on record provided by complainant and respondent.
4. 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 30.01.2019. The reply has been filed by the respondent which has been perused.

Facts of the complaint: -

5. The complainant submitted that the respondent launched a residential-cum-commercial project originally known as Esfera Elvedor, situated at Sector – 37C, Gurugram, Haryana,



India (hereinafter referred to as the “**Project**”) in and about the year 2012.

6. The complainant vide an application form dated 24.07.2012 applied for allotment of one studio apartment in the project namely “Esfera Elvedor” having super area of 435 sq. ft. situated on the 3th floor of the project.
7. It is relevant to note that at the time of applying for the studio apartment, the complainant was informed that the respondent had the complete right, title and authorization on the project land and also had the requisite sanctions and approvals from the relevant authorities to undertake such construction. It was further informed that the project will be completed within a period of 60 months from the date of booking and the complainant will be handed over possession of the studio apartment in question in the said time period.
8. On the basis of such representations, the complainant paid an amount of Rs. 2,50,000/- to the respondent as evidenced by the receipt dated 24.07.2012 as the requisite booking fees. Whilst the respondent had not issued any allotment letter till this point of time nor provided any buyers agreement,



however, the respondent further issued demand letter dated 01.09.2012 calling upon the complainant to pay a further amount of Rs. 3,95,756/-.

9. However, for a period of 8 months from the date of booking, no information was received by the complainant. Subsequently, the respondent issued a provisional allotment for unit bearing 6_S20 on 6th floor in tower B in the project “Elvedor Studio” for a total sale consideration of Rs.33,95,965/-. It is pertinent to note that originally, the complainant had applied for a project titled “Esfera Elvedor” which name had been changed to “Elvedor Studio”.
10. Instead of providing the buyers agreement, the respondent raised another demand vide a demand letter dated 05.01.2016. In terms of the demand letter, the name of the project itself had been changed to “37th Avenue”. It is pertinent to mention that the complainant had applied in “Esfera Elvedor” which was changed at the time of allotment to “Elvedor” and now it had been changed to “37th Avenue”. Further, the tower had also been changed from “tower B” to “tower Rubix”.



11. The complainant became suspicious since no construction activity had admittedly been undertaken for a period of 3 years and the original timeframe which had been provided at the time of booking had virtually been breached by the respondent since the respondent would in any event not be able to provide possession by 2017 as was originally assured. The complainant was further shocked to learn that the excavation work was being commenced only in January 2016 when in fact booking had been undertaken a long time back in 2012 itself.
12. Subsequently, vide letter dated 06.06.2018 the unit of the complainant had been unilaterally changed to 4_S04. The respondent had also unilaterally removed specifications which were originally provided to the respondent. On telephonic conversations, the respondent issued a letter changing the unit to 3_S03 in place of 4_S04.
13. Having realized the fraud being perpetrated by the respondent, the complainant started making enquiries and discovered that the respondent did not have the requisite license to undertake construction. A license bearing no. 51 of



2012 was issued in favour of Prime Time Solutions which had since expired on 16.05.2018 itself. The respondent had purportedly applied for a renewal of the license which was extended only till 16.05.2018 and subsequently no renewal was effective.

14. It is further pertinent to note that to the best of the knowledge of the complainant, the respondent does not even possess a registration certificate under the Real Estate (Regulation and Development) Act, 2016. The complainant on enquiry became aware that vide an order dated 02.02.2018, it was clearly pointed out that no valid license under DTCP norms had been provided and such time was provided to supply the license by 28.02.2018. Even if such license has been supplied during this period, given that the license itself has lapsed, consequently, it is evident that the respondent does not have the requisite sanction to undertake construction of the project.

15. It is further pertinent to note that even after expiry of 6 years from the date of booking, till date only a rudimentary structure of one out of the several building forming part of the project has been erected on the project land which is incapable of



possession. The complainant's studio is not located on such part of the structure. In the structure where the complainant's unit is purportedly to be constructed, in fact no structure is also constructed. Additionally, there is no other development on the project land for last two years and the construction activities have been stopped since 2016.

16. It is further pertinent to note that licenses, if any, were existing only in the name of Prime Time Solutions and not the respondent at any point in time. Given that the respondent did not in fact have any licenses in its name, it is evident that the respondent never had the requisite sanction/approval to undertake construction.

Issues to be decided

17. The issues raised by the complainant are as follows :-
- Whether the respondent has misrepresented to the complainant that it has necessary sanctions and approvals in place to undertake construction of the proposed project?



- ii. Whether the respondent has undertaken construction of the proposed project in accordance with sanctioned plans?
- iii. Whether the respondent has abandoned the project and is liable to refund the amount alongwith interest to the complainant?
- iv. Whether the respondent has failed to provide possession of the unit in question without any reasonable justification?
- 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:-

18. The reliefs sought by the complainant are as follows :-

- i. Pass appropriate directions to the respondent directing a refund of the amount of Rs. 6,45,756/-;
- 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. 6,45,756/- from the date of deposit till the date of actual receipt;

- iii. Pass any other order as the hon'ble authority may deem fit in the interest of justice.

Respondent's reply : -

19. The respondent has denied each and every allegations and contentions raised by the complainant. It is 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.

20. The respondent has submitted that the construction has been delayed due to force majeure circumstances beyond the control of the respondent. 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.



21. 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 19.03.2013. It was further submitted by the respondent that they had obtained all necessary permissions and sanctions for the commercial project in question.

22. 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.

23. 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. 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.

24. 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.
25. The complainant had opted for construction linked payment plan and had till date paid an amount only of Rs.6,45,756/- against the said unit.
26. The respondent filed a suit bearing no. 149SK titled as Imperia Wishfield Private Limited versus Prime IT Solutions Private Limited and others, whereby seeking the relief of declaration along with consequential relief of permanent injunction against the Prime IT Solutions Pvt. Ltd and others bhumidar of land in question namely, Sh. Rattan Singh and Mahipal both sons of Sohan Lal, Hari Kishan son of Ganesh, Rajpal and Shiv



Charan both son of Mangtu and Smt. Nirmala Devi wife of Kawan Singh.

27. That in terms of the decree sheet judgment and sanctioning of mutation no. 2117 for transfer of the ownership of project land to imperia wishfield pvt. Ltd., imperia wishfield pvt. Ltd. was declared the owner of the property in question.
28. It is humbly submitted that the complainant and the respondent are bound by the terms and conditions of the application form and therefore the dispute if any falls within the ambit of a civil dispute and all other allegations levelled by the complainant are false and baseless.
29. It is submitted that the respondent has already invested the entire sum of money received by the respondent towards the said unit in the construction of the said project. Therefore, is not in position to refund the same to the complainant.

Report of the local commissioner

30. DTCP licenced no. 47 of 2012 dated 17.05.2012 was issued in favour of Prime I.T Solutions Pvt. Ltd. and other in Sector-37 C,



Gurugram. Neither licence nor building plan was approved by DTCP in favour of M/s Imperia Wishfield Pvt. Ltd.

31. State Environment impact assessment authority of Haryana issued environmental clearance in 2014 for construction of 01 block + 02 basement + maximum 12 floors, however, M/s Imperia Wishfield Pvt. Ltd. has constructed basement 2 levels + GF + 14 floors for which they don't have any permission/clearance of SEIAA.

32. 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 24.01.2019. Keeping in view above facts and figures, it is reported that the work has been completed with respect to financially is 42.20% where as the work has been completed physically is about 30% approximately.



Objections raised on behalf of the respondent to the report of local commissioner

33. 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.

34. 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.



35. The said report deserves to be disregarded, ignored and discarded for all intents and purposes. In case the completely flawed, absolutely illegal and perverse report is considered or taken into reckoning for adjudication of the present litigation, the same is bound to result in an incorrect decision being rendered by this honourable authority.
36. 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 licence nor building plan has been approved by Director General, Town and Country Planning, Haryana, Chandigarh in favour of the respondent.
37. As submitted earlier, the complete facts pertaining to the transaction and documents related thereto were sought to be submitted to the local commissioner during the course of inspection made by him. However, the local commissioner simply refused to even look at the documents which were readily available with the officials of the respondent present at the spot.



38. In the present case, Prime IT Solutions Private Limited had entered into development agreement dated 06.12.2011 bearing vasika number 25315 with Mr Ratan Singh etc. (land owners) for development of a commercial colony over the aforesaid land holding. In furtherance of development agreement dated 06.12.2011 bearing vasika number 25315, application for grant of licence for development of a commercial colony over the land subject matter of said contract had been submitted by Prime IT Solutions Private Limited with Directorate of Town and Country Planning, Haryana, Chandigarh.

39. In furtherance of the aforesaid application, licence bearing number 47 of 2012 and licence bearing number 51 of 2012 had been granted on 12.05.2012 on 17.05.2012 by Directorate of Town and Country Planning, Haryana, Chandigarh.

40. A collaboration agreement had been executed between the respondent and Prime IT Solutions Private Limited in terms of which the respondent was/is entitled to undertake the implementation of the commercial colony over the land subject matter of aforesaid contract. A general power of



attorney dated 19.03.2013 bearing vasika number 1374 had also been executed and registered by Prime IT Solutions Private Limited in favour of the respondent.

41. 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.

42. In the meantime differences had arisen between Prime IT Solutions Private Limited, respondent and the land owners. 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".

43. In the meantime differences had arisen between Prime IT 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".



44. Judgment dated 21.01.2016(annexure RC) had been passed by Mr. Sanjeev Kajla the then civil judge, Gurugram 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.
45. 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 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.
46. 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.

47. 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.

48. It has been legally observed by the local commissioner in the report submitted by him that State Environment Impact Assessment Authority of Haryana had granted environmental clearance in the year 2014 for construction of only 12 floors in addition to basement and ground floor and at the spot 14



floors had been constructed by the respondent in violation of the sanction granted.

49. The local commissioner for reasons best known to him was determined to submit a report against the respondent. The officials of the respondent present at the spot had tried to handover to the local commissioner the duly sanctioned plan by State Environment Impact Assessment Authority of Haryana wherein 14 floors were clearly indicated to have been sanctioned. It was brought to the attention of the local commissioner by officials of the respondent that the respondent was comprised of law abiding citizens and had not violated or infringed any provision of law and had not undertaken any development/construction at variance or in infringement of sanctions accorded by the concerned authorities.

50. It has further been erroneously and illegally observed by the local commissioner that no environmental clearance had been obtained by the respondent for construction of building in land measuring 4 acres. This observation made by the local commissioner is also absolutely factually incorrect. In fact,



attention of the local commissioner had been drawn to memo dated 07.11.2014 (annexure RF) whereby environmental clearance had been granted in respect of land measuring 4 acres. However, for reasons best known to local commissioner, this fact has not been mentioned in the report submitted by him. This fact by itself comprehensively establishes that the local commissioner has proceeded in a biased manner.

51. 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.

52. 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.

53. 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.

54. It is, therefore, humbly prayed that in the interest of Justice your honour very kindly pleased to reject, discard and ignored the report submitted by the local commissioner for the reasons submitted above. Any other direction which this honourable authority deems appropriate and suitable may also very kindly be passed in the facts and circumstances of the present case.



Determination of issues :-

55. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issues wise findings of the authority are as under:

56. With respect to **first, second and fifth issues** raised by the complainant is concerned the complainant has failed to produce any iota of evidence in support of her allegation that the respondent was not having valid sanctions and approvals to undertake construction of the proposed project.

However, it is also clear from the records that DTCP license has been granted to the respondent vide no. 47 of 2012 dated 12.05.2012 and environment clearance is also received by the respondent.

57. With respect to the **fourth issue** raised by the complainants, by virtue of allotment letter dated 12.09.2013, the possession was to be handed over to the complainant within a period of 60 months which comes out to be 11.09.2018. As such, the complainant is entitled to get interest for the delayed period @ 10.75% per annum w.e.f. 11.09.2018 as per the provisions of section



18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

58. With respect to **third issue** raised by complainant, keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint, it shall hamper the completion of the project. The refund of deposited amount will also have adverse effect on the other allottees. Therefore, the relief sought by the complainant cannot be allowed.

Findings of the authority: -

59. The authority has complete jurisdiction to decide the complaint in regard to 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and 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.

60. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter.
61. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.
62. Report of local commissioner dated 30.01.2019 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 '37th 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 '37th 'AVENUE' being developed by M/s Imperia Wishfield Pvt. Ltd. The overall progress of the project '37th 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".

63. 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.



64. There were certain legal wrangling 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, Gurugram, 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.

65. By virtue of allotment letter dated 12.09.2013, the possession was to be handed over to the complainant within a period of 60 months which comes out to be 11.09.2018. As such, the complainant is entitled to get interest for the delayed period @ 10.75% per annum w.e.f. 11.09.2018 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

66. 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.



Decision and direction of the authority: -

67. 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 issues the following directions to the respondent in the interest of justice and fair play:

- i. The respondent is duty bound to pay the interest at the prescribed rate i.e. 10.75% for every month of delay from the due date of possession w.e.f 11.09.2018 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 10th of subsequent month.
- iii. The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.



68. The order is pronounced.

69. Case file be consigned to the registry.

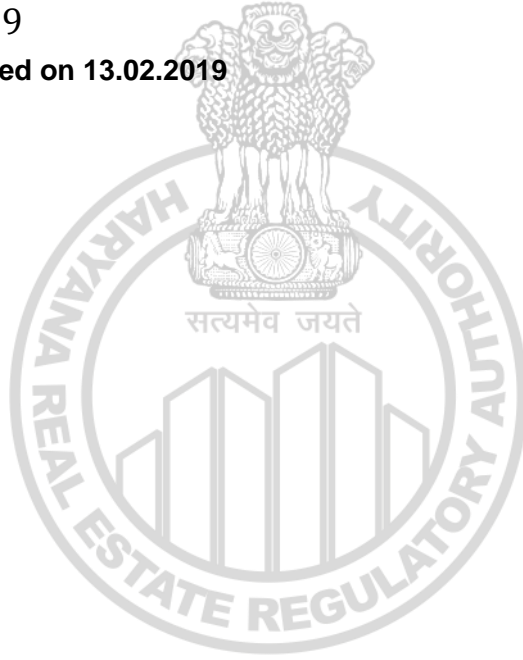
(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated 06.02.2019

Judgement Uploaded on 13.02.2019



HARERA
GURUGRAM

