

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 06.02.2019
Complaint No.	1261/2018 Case Titled As Ramesh Kumar Koul V/S M/S Imperia Wishfield Pvt Ltd
Complainant	Ramesh Kumar Koul
Represented through	Complainant in person with 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	31.1.2019
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.

The homebuyer has entered into an agreement with M/s Imperia Wishfield Pvt. Ltd. on **12.2.2014** and the possession was to be handed over to the complainant within a period of 60 months which comes out to be **11.2.2019**. In case the respondents fails to deliver the possession of the unit by the committed i.e. **11.2.2019**, in that case the complainant shall be entitled to get interest for the delayed period @ 10.75% per annum.

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.

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. : 1261 of
2018**
First date of hearing: 31.01.2019
Date of decision : 06.02.2019

Mr. Ramesh Kumar Koul
G 602, RAIL Vihar, Sector 15,
Part 2, Gurugram. Haryana: 122001.

Complainant

Versus

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

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Parikshit Kumar Advocate for the complainant
Mr. Ramesh Kumar Koul Complainant in person
Shri J.K Dang and Shri Ishaan Dang Advocate for the respondent
Shri Rohit Sharma Authorised representative on
behalf of respondent company



ORDER

1. A complaint dated 16.10.2018 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. Ramesh Kumar Koul against the respondent promoter Imperia Wishfield Pvt. Ltd. for not handing over possession by the due date as per studio apartment buyer's agreement executed on 12.02.2014 in respect of apartment described as below in the project "Elvedor" which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*. Although the complaint is pre-mature on this count, the complainant is alleging that the construction activity is going at slow pace that there is no possibility of getting the possession of the unit in question by the committed date, which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the studio apartment buyer agreement has been executed on 12.02.2014 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 case are as under: -

Nature of project: Commercial
DTCP License no: 47 of 2012 dated 12.05.2012
Valid up to: 11.05.2016
License holder- M/s Prime IT Solutions Pvt. Ltd.

1.	Name and location of the project	Elvedor, Sector 37C, Gurugram
2.	RERA registered/ Unregistered	Not registered
3.	Apartment/unit no.	6-A01, 6 th floor(tower Evita)
4.	Apartment measuring	659 sq. ft.
5.	Date of execution of studio apartment buyer's agreement	12.02.2014
6.	Payment plan	Construction linked
7.	Total consideration as per clause 1 of the agreement	Rs. 45,19,819/-
8.	Total consideration paid by complainant till date as alleged by the complainant	Rs. 39,72,345/-
9.	Date of delivery of possession as per clause 11(a) of studio apartment buyers agreement: within 60 months from the date of agreement	11.02.2019
10.	Delay	Pre mature
11.	Penalty as per clause 14 of studio apartment buyer agreement	Rs. 20 per sq. ft. super area



4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A studio floor buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same is to be delivered by 11.02.2019.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The reply filed on behalf of the respondent has been perused.

FACTS OF THE COMPLAINT:

1. The respondent launched a residential cum commercial project originally known as Esfera Elvedor, situated at sector 37C, Gurgaon, Haryana, India.
2. The complainant vide an application applied for allotment of one studio apartment in the project namely Elvedor having super area of 659 sq. ft. situated on the 3rd floor of the project.
3. The complainant paid an amount of Rs. 3,51,576 vide cheque bearing no. 618518 dated 16.10.2012. Pursuant to this



payment, the respondent issued a receipt dated 16.10.2012 (printed on 26.11.2012) for the booking amount.

4. Respondent issued a welcome letter dated 15.11.2012 wherein the respondent acknowledged the complainant as a customer for a studio apartment admeasuring 659 sq. ft. in the project.
5. The 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 17.11.2012 calling upon the complainant to pay a further sum of Rs. 5,54,525 in terms of the payment plan.
6. The complainant issued a cheque bearing no. 018519 dated 01.12.2012 in favor of the respondent for a sum of Rs. 5,54,525. The respondent also issued a receipt dated 30.11.2012 (printed on 10.11.2012) acknowledging receipt of the amount.
7. After 7 months from the date of booking, the respondent provided a letter dated 09.05.2013 pursuant to which the respondent confirmed having allotted a studio apartment bearing Unit No. 5_S12 on the 5th Floor in Tower B in the commercial project “Elvedor Studio Apartments” at Sector 37-C, Gurgaon, Haryana admeasuring 659 sq.ft. at the basic



sale price of Rs. 5,335 per sq ft. Whilst the complainant had opted for studio apartment on 3rd floor, the respondent had unilaterally changed the booking and confirmed a different unit contrary to agreed terms without obtaining consent.

8. The respondent, issued an allotment letter dated 23.09.2013 wherein the respondent again unilaterally changed the allotment of the commercial unit to 6_A01 without obtaining the consent of the complainant. The complainant protested against such unilateral changes, however, the respondent assured that no further changes will be effected and that the project will proceed smoothly going forward.
9. The respondent issued a demand letter raising a fresh demand of Rs. 3,62,441 for start of excavation work.
10. The respondent informed the complainant that construction is being commenced on the project and that bhumi poojan has been completed on 05.10.2013.
11. The complainant made the payment with respect to the demand notice dated 07.10.2013 which was duly acknowledged by the respondent.
12. The respondent vide their letter supplied a copy of the buyers agreement.



13. The letter dated 02.01.2014 appears to be withdrawn and another letter was issued enclosing a separate buyers agreement in respect of Unit No. 6_A01 situated in Tower 'Evita' in the project "Elvedor Studio", Sector 37C, Gurgaon Haryana was sent by the respondent situated in Tower 'Evita' in the project "Elvedor Studio", Sector 37C, Gurgaon Haryana. Whilst there were several one sided clauses under buyers agreement, being a trapped customer and having paid substantial amounts already, the complainant was constrained to execute the studio buyers agreement dated 05.12.2013. It is relevant to note that respondent represented that it has necessary sanctions to undertake construction and deliver project.
14. Upon execution of the buyers agreement, the respondent issued several demand letters purportedly as per the stage of construction and the complainant continued to make payments in respect of the same as evidenced by various receipts issued during the contemporaneous period.
15. It is pertinent to note that as per the receipts and the demand letters the respondent had carried on construction till 15th floor and by June 2016 the complainant had made payments towards the said allotment to the tune of Rs. 39,72,345. However, subsequently construction stopped.



16. No construction appears to have been undertaken in the said project and the construction has remained halted. The complainant made several enquiries and on each occasion was informed that the construction would recommence soon

17. When no construction was undertaken for a period of 2 years, the complainant started making enquiries and it was discovered that the respondent did not have the requisite licenses to undertake construction. A license / letter of intent was issued in favor of Prime IT Solutions Private Limited (and not the respondent) on 24.05.2011. As such the representations in the buyers agreement were found to be incorrect. complainant further undertook enquiries on the status of license bearing No. 47 of 2012 (as specified in the buyers agreement) issued in favor of the Prime IT Solutions on 12.05.2012 and it was discovered that the license has expired on 11.05.2016 itself. It was further discovered that in terms of the sanctioned plans available on the DTCP website, approval had been granted to construct 13 floors only whereas the respondent had purportedly constructed and taken moneys for construction up to the 15th floor. These essential facts were also actively suppressed.

18. The complainant accordingly made several requests to the respondent to refund the entire amount which the



complainant has paid towards the said allotment, however, the respondent has refused to entertain any legitimate request for refund of amounts.

19. The complainant has further become aware that in order to enforce its purported rights against Prime IT Solutions and other land owners, the respondent filed a civil suit before the Ld. Civil Judge (Jr. Division) wherein a compromise was executed between the parties to the suit. Pursuant to such compromise dated 12.01.2016 and a compromise decree dated 21.01.2016, the respondent presumably has acquired rights in respect of the project land. However, it is evident, the respondent still does not have the requisite sanction from the concerned authorities to undertake construction over the lands since the approval/license was issued only in the name of Prime IT Solutions and not the respondent. As such the construction is completely not sanctioned and this fact has been actively concealed by the respondent for almost 6 years.

20. 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. Additionally, there is no other development on the project land for last two



years and the construction activities have been stopped since 2016.

ISSUES RAISED BY THE COMPLAINANTS:

21. The following issues have been raised by the complainants:

- a. 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?
- b. Whether the respondent has abandoned the project and consequently is liable to refund the amounts along with interest to the complainant?
- c. Whether the respondent has failed to provide possession of the unit in question without any reasonable justification?
- d. Whether the respondent has undertaken construction of the proposed project in accordance with any sanctioned plans which have been duly approved?
- e. 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 BY THE COMPLAINANTS:

22. The complainants is seeking the following reliefs:

- i. Pass appropriate directions to the respondent directing a refund of the amount of Rs. 39,72,345/- paid by the complainant to the respondent.
- 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. 39,72,345/- from the date of deposit till the date of actual receipt;
- iii. Pass any other order as this hon'ble authority may deem fit in the interest of justice.

RESPONDENT'S REPLY:

23. That the present complaint, filed by the complainants, is absolutely frivolous, misconceived, mala fide and an abuse of the process of this hon'ble authority.

24. That the complainants have failed to approach this hon'ble authority with clean hands lacks bonafide intents and suppressed material facts.

25. That the present complaint has been filed by the complainants with a mala fide intention with a view to force



the respondent to accede to the whims and fancies of the complainant.

26. It is submitted that the complainants are investors who has made investment in the esteemed project namely "Esfara Elvedor" located at Sector 37C Gurugram Haryana. Accordingly, the complainant was allotted unit bearing no.3_A12 admeasuring (436 sq. ft/40.51 sq. mtrs). The complainants had opted for construction linked payment plan and had till date paid an amount only of Rs. 39,72,345/- against the said unit.

27. That despite being fully aware of the status of the project and the reasons for delay that being beyond the control of the respondent, the complainants herein filed present complaint and the same is based on absolutely concocted and misconceived statements.

28. That it is humbly submitted that Prime IT Solutions Pvt. Ltd., had entered into a development agreement dated 06.12.2011 duly registered bearing registration no. 25,315 in book no. 1, volume 12,981 on page no. 102 with Shri Ratan Singh & Shri Mahipal both son of Shri Sohan Lal, Shri Hari Kishan, Shri Rajpal & Shri Shiv Charan both son of Shri Mangtu & Mrs. Nirmala Devi w/o Shri Kanwal Singh for



development of a commercial colony upon the aforesaid land holding.

29. That in furtherance of the aforesaid development agreement, an application for grant of license to develop a commercial colony over the aforesaid land holding had been submitted by the M/s Prime IT Solutions Pvt. Ltd. and Director General, Town and Country Planning Haryana, Chandigarh commercial complex/ colony on the project land. Later, M/ s Prime IT Solutions Pvt. Ltd. and developer executed a term sheet which took the shape of the collaboration agreement. Further, a general power of attorney was also executed by M/s Prime IT Solutions Pvt. Ltd. in favour of developer whereby the M/s Prime Solutions Pvt. Ltd. has agreed to sell, transfer and convey the said property in favour of M/s Imperia Wishfield Pvt. Ltd. and said general power of attorney is registered on 19.03.2013. That the respondent had obtained all necessary permissions and sanctions for the commercial project to be developed at Sector 37 C Gurgaon Haryana. The respondent has granted letter of intent for setting up a commercial colony on 24.05.2011 and subsequently the license no. 47 of 2012 and license no. 51 of 2012 was granted on 12.05.2012 and 17.05.2012.



30. Thereafter, the respondent applied for environment clearance vide application dated 06.11.2012 and was granted the environment clearance for the construction of the said project. Further the Directorate of Town and Country Planning sanctioned the building plan and other necessary permissions such as forest clearance. Furthermore NOC for height clearance was also obtained from Airports Authority of India was obtained.

31. That thereafter 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 the 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 Chf.tran both son of Mangtu and Smt. Nirmala Devi wife of Kawan Singh.

32. The hon'ble court of Sh. Sanjeev Kalja, Ld. Civil Judge (Jr. Division) passed the judgment in terms of the compromise deed and issued the direction to prepare the decree sheet and sanctioning of mutation no. 2117 for transfer of the ownership of project land to Imperia



Wishfield Pvt. Ltd., which was declared the owner of the property in question.

33. That it is humbly submitted that by virtue of acts in law, the above permissions, agreements and court decree, Imperia Wishfield Pvt. Ltd. have the absolute right to market, sell, allot plots, receive monies, give receipts, execute conveyance, other documents, etc. and, as such, Imperia Wishfield Pvt. Ltd. became competent to enter into agreements
34. That it is submitted that the construction at the site is being done in phases and is going in full swing. It is further humbly submitted that any delay in delivering the possession to the complainant cannot be attributed upon the respondent due to force majeure events, which were beyond the control of the respondent.
35. That it is humbly submitted that the complainants 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.
36. That the respondent cannot be held liable for any cost or damages/interest due to delay in obtaining regulatory



compliances from various authorities and for any default on the part of the complainants themselves.

37. That the complaint filed by the complainants is merely a tactic to harass the respondent as the complainants were duly informed from time to time regarding the status of the project.

38. 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, not in the position to refund the same to the complainant.

39. It would be pertinent to mention here that the due to the sudden fall in the real estate market, the complainant is willing to withdraw himself from the said project.

DETERMINATION OF ISSUES:

40. 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:

a. 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.

- b. 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. 12.08.2019 has not been crossed and complaint remains premature, therefore, refund cannot be allowed at present stage.
- c. In respect of **third issue** raised by the complainant, as per clause 11(a) of the buyer's agreement dated 12.02.2014, the possession of the flat was supposed to be handed over within a period of 60 months from the date of this agreement. Therefore, the due date for delivery of possession comes out to be 11.02.2019. Thus, the complaint is pre-mature. Hence, any delay on the part of respondent cannot be attributed at this stage.
- d. 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:

41. **Jurisdiction of the authority-** 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 Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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.

42. **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.
43. 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.
44. 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.



45. 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’ 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 24.01.2019. 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 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”.



46. 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.

47. 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.
48. The homebuyer has entered into a builder buyer agreement with M/s Imperia Wishfielf Pvt. Ltd. on 12.02.2014 and the possession was to be handed over to the complainants within a period of 60 months which comes out to be 11.12.2019. in that case the complainant is entitled to get interest for the delayed period @10.75% per annum.
49. 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:

50. 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 the following:

a. In case the respondent fails to deliver the possession of the unit by the committed date i.e. 11.02.2019, in that case the complainant shall be entitled to get interest for the delayed period @10.75% per annum.

51. As the project is registerable and has not been registered by the promoter, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent under section 59 of the Act ibid. A copy of this order be endorsed to registration branch for further action in the matter.

52. The order is pronounced.

53. Case file be consigned to the registry.

**(Samir
Kumar)**
Member

(Subhash Chander Kush)
Member

Date: 06.02.2019

Judgement uploaded on 26.02.2019

