

**PROCEEDINGS OF THE DAY**

|                                |   |
|--------------------------------|---|
| Day and Date                   | Wednesday and 06.02.2019  |
| Complaint No.                  | 790/2018 Case titled as Ashwini Kalra V/S M/S Imperia Wishfield Pvt Ltd.  |
| Complainant                    | Ashwini Kalra   |
| Represented through            | Ms. Neeta Sinha, 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           | 15.1.2019   |
| Proceeding Recorded by         | Naresh Kumari & S.L.Chanana   |

**Proceedings**

**Respondent has applied online for registration.**

Arguments heard.

Case of the complainant is that he had booked a flat No.B-99 Ground Floor in project "Elvedor" Sector 37-C, Gurugram on 8.8.2012 for a total sale consideration of Rs.21,59,325/- out of which the complainant has so far paid an amount of Rs.4,06,067/- to the respondent. No BBA to this effect has been executed inter-se the parties. The complainant has prayed for refund of the amount deposited with the respondent.

As per averments made by the counsel for the complainant that there is no progress w.r.t. construction of work. Since there is no hope and scope for completion of project, no choice is left with the authority but to direct the respondent to refund the entire amount deposited by the complainant with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order.

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. : 790 of 2018**  
**First date of hearing : 15.01.2019**  
**Date of decision : 06.02.2019**

1. Mr Ashwini Kalra  
R/o House no-12/4, 3<sup>rd</sup> floor, Subhash  
Nagar, West Delhi-110027 **Complainant**

Versus

1. M/s Imperia Wishfield Pvt. Ltd. (Through  
Managing Director)  
2. M/s Imperia Structures Ltd (Through  
Managing Director)

**Registered office : A-25, Mohan Co-opt.  
Industrial Estate, Mathura Road, New Delhi. Respondents**

**CORAM**

Shri Samir Kumar **Member**  
Shri Subhash Chander Kush **Member**

**APPEARANCE**

Ms Neeta Singh **Advocate for complainant**  
Shri Ishaan Dhang **Advocate for respondents**



**ORDER**

1. A complaint dated 05.09.2018 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 Ashwini Kalra, against the promoters M/s Imperia Wishfield Pvt. Ltd. and M/s Imperia Structures Ltd on account of not delivering the possession of the booked unit bearing no. B-99 on the ground floor admeasuring 197 sq. ft. in the project namely “Elvedor”, located at sector 37 C, Gurugram.

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

|     |   |   |
|-----|---|---|
| 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.  | Current status of the project           | As per the report of the local commissioner, the project is 42.20% financially completed and 30% of physical work has been completed. |
| 5.  | Unit no.                                | B-99, Ground floor  |
| 6.  | Unit area                               | 197 sq. ft  |
| 7.  | DTCP license                            | 47 of 2012  |
| 8.  | Registered/ un registered               | Not registered  |
| 9.  | RERA registration no.                   | Not applicable  |
| 10. | Completion date as per RERA certificate | Not applicable  |
| 11. | Date of booking                         | 08.08.2012  |
| 12. | Date of agreement                       | Not executed  |
| 13. | Total consideration                     | Rs. 21,59,325/-   |
| 14. | Total amount paid by the complainant    | Rs 4,06,067/-   |



|     |                                  |                          |
|-----|----------------------------------|--------------------------|
| 15. | Payment plan                     | Construction Linked Plan |
| 16. | Date of delivery of possession   | Cannot be ascertained    |
| 17. | Delay of number of months/ years | Cannot be ascertained    |

3. The details provided above have been checked as per the case file available on record provided by complainant and respondents. A builder buyer agreement has not been executed between both the parties and not available on record.
4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. Accordingly, the respondents appeared on 15.01.2019. The case came up for hearing on 15.01.2019 and 06.02.2019. The reply filed on behalf of the respondents has been perused.

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

5. The complainant submitted that he booked a commercial unit on 08.08.2012 having unit no B-99 admeasuring about 197 sq. ft at Sector 37C Gurgaon Haryana in Elvedor for a basic sale price of Rs 8245/- per sq. ft and total sale consideration of Rs 21,59,325/-
6. The complainant also submitted that the respondents has breached by delaying the project as the booking was done on 08.08.2012 and no builder buyer agreement was signed but



the project was to be handed over within 36 months as informed by the respondents but till date no construction has been done and the complainant has not been allotted any unit even after payment of Rs 4,18,614/- and 2 times the layout plan has been changed without giving any notice to the complainant

7. The complainant also submitted that he contacted the respondents to know about the status of the project but no satisfactory answer was received and finally vide letter dated 07.11.2012 the respondents sent a demand notice.
8. The complainant submitted that he contacted the respondents for refund several times and several calls and emails but the respondents or their employees did not reply to any of them except a mail dated 20.04.2015 saying that "Your request has been considered and your file has been processed for refund"
9. The complainant also submitted that he has suffered great hardship and mental agony due to the acts of the respondents and the respondents have used the money collected from the complainant for the purposes other than the construction of the project.



### Issues to be decided

10. The issues raised by the complainant are as follows :-

- i. Whether the respondents are liable to refund the amount paid by the complainant along with interest to the complainant?

### Relief sought:-

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

- i. Direct the respondents to refund Rs. 4,18,614/- paid by the complainant along with interest payable under section 18 of Real Estate (Regulation and Development) Act, 2016 read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules.
- ii. Award costs

### Respondent's reply : -

12. The respondents 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.





13. The respondents has submitted that the construction has been delayed due to force majeure circumstances beyond the control of the respondents.
14. It was further submitted by the respondents 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.
15. The respondents 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.
16. It was further submitted by the respondents that they had obtained all necessary permissions and sanctions for the commercial project in question.
17. The respondents 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.
18. The respondents has submitted that they had filed a suit titled Imperia Wishfield P. Ltd. versus Prime IT Solution P. Ltd.





whereby seeking 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.

19. The respondents 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.
20. The respondents submitted that the construction at the site is being done in phase and in going on full swing. It was further submitted by the respondents 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 :-**

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

- i. As regards the **first issue** raised by the complainant, after perusal of local commissioner report and averments made by the counsel for the complainant, the authority is of the view that there is no progress with respect to construction work of the project in question and there is no hope and scope for completion of project. Therefore the respondents are liable to refund the total amount deposited by the complainant

**Findings of the authority: -**

22. 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.

23. 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.

24. **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.
25. 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.
26. 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.

**27. Objections raised on behalf of the respondents to the**

**report of local commissioner :** The respondents 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.

**28. The respondents 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.



29. The respondents 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.

30. The respondents 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 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 others*".

31. The respondents 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.

32. The respondentsssss 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”.

33. The respondents 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.





34. The respondents 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.
35. The respondents 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.
36. The respondents 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.

37. The respondents 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.

38. The respondents 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.



39. 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.
40. In the present case, the authority has observed that the complainant had booked a flat no. B-99, ground floor in project "Elvedor" Sector 37-C, Gurugram on 8.8.2012 for a total sale consideration of Rs.21,59,325/- out of which the complainant has so far paid an amount of Rs. 4,06,067/- to the respondents. No agreement to this effect has been executed inter-se the parties. The complainant has prayed for refund of the amount deposited with the respondents. As per averments made by the counsel for the complainant that there is no progress w.r.t. construction of work. Since there is no hope and scope for completion of project, no choice is left with the authority but to direct the respondents to refund the entire amount deposited by the complainant with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order.



**Decision and direction of the authority: -**

41. The authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues following direction against the respondent :

- I. The respondents are directed to refund the entire amount deposited by the complainant along with interest at prescribed rate i.e. 10.75% per annum within a period of 90 days from the date of this order.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated : 06.02.2019

Judgement Uploaded on 01.03.2019

