

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 06.02.2019
Complaint No.	1237/2018 Case titled as Kalyani Kumar And S Vijayakumar V/S M/S Imperia Wishfield Private Limited
Complainant	Kalyani Kumar And S Vijayakumar
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	2.1.2019
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. : 1237 of 2018
Date of first hearing : 02.01.2019
Date of Decision : 06.02.2019

1. Sh. S Vijayakumar
2. Smt. Kalyani Kumar
Both R/o D 946, Gaur Green Avenue, Abhay
Khand II, Indirapuram, Ghaziabad **...Complainants**

Versus

M/s Imperia Wishfield Pvt. Ltd.
Office at: A-25, Mohan Co-operative
Industrial Estate, Mathura Road, New Delhi **...Respondent**

CORAM:

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

APPEARANCE:

Shri Parikshit Kumar Advocate for the complainants
Shri Rohit Sharma Authorised representative on
behalf of the respondent company
Shri J.K.Dang and Shri Ishaan Dang Advocates for the respondent
Dang



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 complainants Sh. S Vijayakumar and Smt. Kalyani Kumar, against the promoter M/s Imperia Wishfield Pvt. Ltd., in respect of apartment number 6_A09, 6th floor, block/tower 'Evita' admeasuring 659 sq. ft. in the project 'Elvedor' on account of violation of obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the buyer's 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 are as under: -

1.	Name and location of the project	"Elvedor" in Sector 37-C, Gurugram
2.	Nature of real estate project	Commercial complex
3.	Unit no.	6_A09, 6 th floor, block/tower 'Evita'
4.	Unit area	659 sq. ft.
5.	Project area	2 acres
6.	Registered/ not registered	Not registered



7.	DTCP license	47 of 2012 dated 12.05.2012 Note: License bearing no. 47 of 2012 expired on 11.05.2016
8.	Date of approval of building plans	25.06.2013
9.	Date of booking	07.05.2012 (as per payment schedule, annexure C-34, pg 146 of the complaint)
10.	Date of buyer's agreement	12.02.2014
11.	Total consideration	Rs. 43,57,211/- (as per buyer's agreement, pg 79 of the complaint)
12.	Total amount paid by the complainant	Rs. 43,27,196/- (as per payment schedule, annexure C-34, pg 146 of the complaint and payment receipt, annexure C-35, pg 148 of the complaint)
13.	Payment plan	Construction linked plan
14.	Date of delivery of possession	11.02.2019 Clause 11(a) – 60 months from date of execution of agreement i.e. by 11.02.2019
15.	Delay of number of months/ years upto 02.01.2019	The complaint is premature
16.	Penalty clause as per buyer's agreement dated 12.02.2014	Clause 14- Rs. 20/- per sq. ft. per month of the super area



4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondent. A buyer's agreement

dated 12.02.2014 is available on record for unit no. 6_A09, 6th floor, block/tower 'Evita' admeasuring 659 sq. ft. in the project 'Elvedor' according to which the due date of possession comes out to be 11.02.2019.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The case came up for hearing on 02.01.2019 and 06.02.2019. The reply has been filed on behalf of the respondent and has been perused.

Facts of the complaint

6. The complainants submitted that on 03.05.2012, they booked a unit in the project named "Elvedor" in Sector 37-C, Gurugram by paying an advance amount of Rs. 3,28,600/- to the respondent. Accordingly, a welcome letter dated 14.05.2012 was issued and the complainants were allotted a unit admeasuring 625 sq. ft. in tower 'Rubix'.
7. The complainants submitted that subsequently, as per demand letter dated 31.07.2012, the area of the studio apartment had been unilaterally changed to 659 sq. ft. without the consent of the complainants. The complainants protested against such unilateral change and enquired as to why further amounts towards booking were being sought. The respondent



sent a letter dated 21.08.2012 wherein the respondent claimed that the area of the unit had been changed to 659 sq ft. and consequently, further amounts were being sought. The respondent further assured that no further changes will be made.

8. The complainants submitted that after receipt of the booking amount which was 25% of the basic price, no communication was received from the respondent for several months. Finally, after several months from the date of booking, the respondent issued an allotment letter dated 24.09.2013 pursuant to which the respondent allotted unit bearing no. 6_A09 admeasuring 659 sq. ft.
9. The complainants submitted that whilst the respondent had not provided any buyers agreement till this time, however, the respondent informed the complainant vide a letter dated 07.10.2013 that bhoomi poojan activities had commenced on the project and the construction is being commenced. The complainants were disappointed to learn that no construction activities had commenced for a period of more than 1 year from the date of booking, however, considering that the construction was being finally commenced and, in the hope, that construction will be completed within the time stipulated



previously, the complainants made relevant payments in compliance of demand letters.

10. The complainants submitted that the respondent finally issued the buyer's agreement vide a letter dated 17.01.2014. It is pertinent to note that again the tower was changed from "Tower Rubix" to "Tower Evita" while the unit no. and project name were maintained. On enquiries, the respondent informed that only name of the tower had changed otherwise the entire project being undertaken was the same.
11. The complainants submitted that in the agreement, it was represented that the said land was owned in part by one Mr. Devi Ram and in the other part by M/s Prime IT Solutions Private Limited. M/s Prime IT Solutions had entered into a collaboration agreement and general power of attorneys in favor of M/s Prime IT Solutions Private Limited. The said Prime IT Solutions subsequently applied for and purportedly obtained a license bearing no. 47 of 2012 dated 12.05.2012 in respect of the project land. Subsequently, Prime IT Solutions entered into collaboration with the respondent pursuant to which the project was being implemented. It was further represented that development plans had also been approved



on 24.05.2011 and based on such approvals, the respondent is competent and entitled to execute the project.

12. The complainants submitted that whilst there were several one-sided clauses under buyer's agreement and the possession timeline also had been changed which was not acceptable, being a trapped customer and having paid substantial amounts already, the complainants were constrained to execute the agreement dated 12.02.2014.

13. The complainants submitted that subsequently, in the year 2017, the respondent also informed the complainants that if the complainants make advance payments for a sum of Rs.5,04,000/-, then the complainants will be able to avoid impact of additional taxes which were likely to take place. The complainants believing that the project was at the final stages remitted a payment of Rs.5,04,000/- which was duly received by the respondent. Thus, the complainants have paid a total sum of Rs.43,27,196/- to the respondent which is almost the entire 100% payment which was to be remitted to the respondent.

14. The complainants submitted that as per demand letters, the respondent had purportedly undertaken construction up till 15th floor by May 2016 itself.



15. The complainants submitted that whilst the complainants were complying with all their obligations, the construction had remained halted since June 2016. When construction halted for a period of 2 years, complainants started making enquiries from the respondent to enquire as to the stage of construction. The respondent vide email dated 07.08.2018 provided photographs of the construction. Upon further enquiries with other allottees in the project, they discovered that neither did the respondent have any right in and over the land at the time of booking, nor did the respondent have requisite sanctions or approvals from the concerned authorities. As such all the representations provided by the respondent in terms of the buyers agreement were found to be deceptive and false. The complainants also became aware of the following facts:

- (i) A license / letter of intent was issued in favor of Prime IT Solutions Private Limited (and not the respondent) on 24.05.2011. As per clause 25 of terms and conditions of the said letter of intent, the colonizer (i.e. Prime IT Solutions Private Limited) was required to provide an undertaking to the effect that land is not being sold to anyone after issuance of the letter of intent. As such, it is evident that a pre-condition for issuance of letter of intent / license was that there is no collaboration agreement / agreement to sell which is in force



on the project land. Therefore, neither did the respondent have any license in its favor nor was it, in any event, without a separate license issued in its favor, entitled to acquire the land or undertake construction on the same.

- (ii) Further a license bearing no. 47 of 2012 was issued in favor of the Prime IT Solutions on 12.05.2012. However, the DTCP Haryana website clearly shows that in fact such license has expired on 11.05.2016 itself.
- (iii) It was further discovered that as per the sanction plan available on the DTCP Website, approval had only been granted for construction up till the 13th floor whereas the respondent was demanding amounts on the basis that 15 floors were being constructed. This essential fact was also actively suppressed.
- (iv) The collaboration agreement dated 06.12.2012 which was the governing document granting the respondent right to undertake construction and development was in fact unregistered. Consequently, at the time of undertaking booking for the complainant, the respondent had no right in and over the said land.
- (v) The complainants further learnt that vide a general power of attorney purportedly registered, Prime IT solutions had



agreed to sell, transfer and convey the project land in favor of the respondent. Even as on the date of execution of the buyer's agreement, no sale had taken place and neither was any registered development agreement executed.

(vi) In fact the respondent in order to enforce its purported rights against Prime IT Solutions 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, as 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.

16. The complainants further 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, there is no other development on



the project land for last two years and the construction activities have been stopped since 2016.

17. Issues to be determined

The relevant issues raised in the complaint are:

- I. Whether the respondent has misrepresented to the complainants 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 and in view of expiry of the license granted to Prime Time Solutions, the respondent is liable to refund the amounts along with interest to the complainants?
- 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?



18. Relief sought

- I. Pass appropriate directions to the respondent directing a refund of the amount of Rs. 43,27,196.
- 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. 43,27,196/- from the date of deposit till the date of actual receipt.

Respondent's reply

19. 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.
20. 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.

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 Private Limited versus Prime IT Solution Private Limited* whereby the relief of declaration along with consequential relief of permanent injunction against the Prime IT Solution Private Limited 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 Private Limited was declared the owner of the property in question.

24. 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.
25. The respondent submitted that the construction at the site is being done in phases and is going on full swing. It was further submitted by the respondent that the complainants are 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 complainants are false and baseless.

Determination of issues

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

26. In respect of **first issue**, complainants have 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.



27. In respect of **second issue**, the complainants have submitted in their reply that the construction of the tower in question is completed uptill 15th floor. As per the report of the local commissioner, the project is 42.20% financially completed and 30% of physical work has been completed. Further, the due date of possession i.e. 11.02.2019 has not been crossed and complaint remains premature. Therefore, refund cannot be allowed at present stage. However, in case the respondent fails to deliver the possession of the unit by the due date, i.e. 11.02.2019, in that case the complainants shall be entitled to interest on account of delayed possession at the prescribed rate of 10.75% per annum.

28. In respect of **third issue** raised by the complainants, as per clause 11(a) of the buyer's agreement dated 12.02.2014, 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. Thus, this issue is decided in negative.

29. In respect of **fourth and fifth issue** raised by the complainants, the complainants have 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. Further, it is clear from the records that DTCP license has already expired on 11.05.2016 and during the proceedings dated 06.02.2019, the counsel for the respondent submitted that they have applied for transfer of license with DTCP.

30. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
31. The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.
32. The complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.



Findings of the authority

33. **Jurisdiction of the authority-** The project “Elvedor” is located in Sector 37-C, Gurugram. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and

Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

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

34. **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 complainants have 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 IT Solutions Pvt. Ltd. and others in Sector 37-C, Gurugram.



35. 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.
36. That 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.
37. During the proceedings dated 06.02.2019, the 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 21.01.2016 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 and as such there is no dispute w.r.t. ownership of land.

38. 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. Keeping in view the status of the project as has been placed on record by the local commissioner appointed in the case, interest of the other allottees, and the fact that the complaint is pre-mature on the date of this order, the authority is of the considered view that refund cannot be allowed at this juncture and 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 complainants shall be entitled to get interest for the delayed period @ 10.75% per annum.



Decision and directions of the authority

39. 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 respondent to complete the project in time and offer the

possession to complainant within the stipulated time period as per terms of the said agreement i.e. by 11.02.2019. In case respondent fails to give the possession accordingly, then the complainants will be entitled to delayed possession interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainants from the due date of possession upto the date of handing over of possession.

40. The complaint is disposed of accordingly.
41. The order is pronounced.
42. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member



Date: 06.02.2019

Judgement Uploaded on 11.03.2019