

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

Complaint no. : 1302 of 2018
Date of first hearing : 03.01.2019
Date of decision : 06.02.2019

1. Mr. Vinod Kumar
 2. Ms. Tripta Behl
- Both R/o H. no. 78, Gali no. 9,
Pawan Nagar, Kangra Colony,
Amritsar-143001, Punjab.

Complainants

Versus

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

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Parikshit Kumar Advocate for the complainants
Shri Vinod Kumar Complainant in person
Shri J.K Dang along with Shri Advocates for the respondent
Ishaan Dang
Shri Rohit Sharma Authorised representative on
behalf of the respondent
company



ORDER

1. A complaint dated 22.10.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read

with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mr. Vinod Kumar and Ms. Tripta Behl, against the promoter M/s Imperia Wishfield Pvt. Ltd., for not handing over the possession of the said unit by the due date which is in violation of obligations of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the allotment letter has been issued on 23.09.2013, i.e. prior to the commencement of the Act *ibid*, 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 part of the promoter/respondent in terms of section 34(f) of the Act *ibid*.
3. The particulars of the complaint are as under:

1.	Name and location of the project	"Elvedor", Sector 37-C, Gurugram
2.	Nature of the project	Commercial colony
3.	Project area	2.0 acres
4.	DTCP license no.	47 of 2012 dated 12.05.2012
5.	Registered/ not registered	Not registered
6.	Unit no.	8_A05, 8 th floor, tower 'Evita'
7.	Unit measuring	659 sq. ft.



8.	Allotment letter	23.09.2013
9.	Date of buyer's agreement	Not executed
10.	Total consideration as per applicant file dated 07.09.2018	Rs.46,46,824/- including taxes
11.	Total amount paid by the complainants as per applicant file dated 07.09.2018	Rs.38,93,104/-
12.	Payment plan	Construction linked plan
13.	Due date of delivery of possession (By virtue of allotment letter, 60 months from allotment letter i.e. 23.09.2013)	22.09.2018
14.	Delay in handing over possession till the date of decision	4 months 15 days

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. An allotment letter dated 23.09.2013 issued by the respondent in the name of complainants is available on record. A non-executed buyer's agreement has been attached with the paper book. By virtue of allotment letter dated 23.09.2013, the possession was handed over to the complainants within a period of 60 months which comes out to be 22.09.2018. The respondent has not delivered the possession of the said unit as on date to the complainants. Therefore, the promoters have not fulfilled their committed liability.



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

Facts of the complaint

6. The complainants submitted that the respondent launched a residential-cum-commercial project originally known as Esfera Elvedor, situated at Sector-37C, Gurugram in and about the year 2012.
7. The complainants submitted that vide an application form dated 15.11.2012, they applied for allotment of one studio apartment in the said project having a super area of 659 sq. ft. situated on the 6th floor. In terms of the application form, the complainants were required to remit payments in accordance with a construction linked payment plan as set out therein.
8. The complainants submitted that the respondent issued a welcome letter dated 04.12.2012 wherein the respondent acknowledged the complainants as a customer for a studio apartment measuring 659 sq. ft. in the project. However, after receiving 25% of total basic price, respondent did not intimate



any timeline within which the buyer's agreement would be executed.

9. The complainants submitted that after 7 months from the date of booking, the respondent provided a letter dated 21.03.2013 pursuant to which the respondent confirmed having allotted a studio apartment bearing unit no. 6_S05 on the 6th floor in tower 'B' in the said commercial project admeasuring 659 sq. ft. at the basic sale price of Rs.5,335/- per sq. ft. and preferential location charges of Rs.1,05,473/-.
10. The complainants submitted that the respondent subsequently issued allotment letter dated 23.09.2013 wherein the respondent again unilaterally changed the allotment of the commercial unit to 8_A05 without obtaining consent of the complainants. It was further assured that the buyer's agreement will be shortly sent to the complainants. The complainants protested against such unilateral changes and the fact that construction had not even commenced. However, the respondent assured that no further changes will be effected and that the project will proceed smoothly going forward.



11. The complainants submitted that shortly thereafter, the respondent issued demand letter dated 07.10.2013 raising a fresh demand 'at the start of excavation' for a sum of Rs.3,62,442/-. It is pertinent to note that the respondent further informed the complainants that construction is being commenced on the project and that bhumi poojan has been completed on 05.10.2013.

12. The complainants submitted that despite the fact that the buyer's agreement was never executed between the complainants and the respondent herein, the respondent issued several demand letters purportedly as per the stage of construction and the complainants continued to make payments in respect of the same as evidenced by various receipts issued during the contemporaneous period. As per the demand letter, the respondent had purportedly undertaken construction up till the 15th floor by May 2016 itself. As evidenced by various receipts, the complainants have paid a sum of Rs.38,93,104/- by June 2016.

13. The complainants submitted that subsequent to receipt of more than 85% of the total price, the respondent did not undertake any construction. The complainants repeatedly requested the respondent to provide status of construction as



well as information on the expected date of delivery of the project. However, no response was forthcoming on the part of the respondent.

14. The complainants submitted that they started making enquiries from the other allottees who were similarly situated and was shocked to learn 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 buyer's 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) 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 complainants, the respondent had no right in and over the said land.
- (iv) 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. In fact, no sale had taken place and neither was any registered development agreement executed.
- (v) 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.

15. 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.

16. The complainants submitted that they had raised demands for refund of their amount, the respondent after 6 years chose to forward the builder buyer agreement dated 07.09.2018 along with statement titled as applicant file. The statement called applicant file provided by the respondent clearly shows that



Rs.38,93,104/- has been paid by the complainants and that since 15.06.2016 no further demand has been raised since no further activity has been carried out. Additionally, it is evident to note that as per clause 11 of the said agreement, the respondent is claiming that the project will be completed within 60 months from the date of agreement i.e. another 5 years with no justification for such unreasonable delay. In view of the same the complainants have refused to sign and send back the same to the respondent.

17. Issues to be decided

The relevant issues raised by the complainants are as follow:

- 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 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 complainants?

18. Reliefs sought by the complainants

- I. Pass appropriate directions to the respondent directing refund of the amount of Rs.38,93,104/-.
- II. Direct the respondent to pay interest at such rates as may be prescribed on the amount of Rs.38,93,104/- from the date of deposit till the date of actual receipt.

Respondent's reply

19. The respondent submitted that the complaint is false, frivolous, malafide and an abuse of process of this authority. It was further contended by the respondent that the complainants have not approached this authority with clean hands. The present complaint has been filed by the complainants with a malafide intention with a view to force



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

20. The respondent has submitted that M/s Prime IT Solutions Pvt. Ltd. entered into a development agreement on 06.12.2011 and the same was duly registered, with Shri Ratan Singh and Shri Mahipal, Shri Hari Kishan, Shri Rajpal, Shri Shiv Chanran and Ms. Nirmala Devi for development of a commercial colony upon the aforesaid land. In furtherance of the development agreement, an application for grant of license to develop a commercial colony over the aforesaid land had been submitted by M/s Prime IT Solutions Pvt. Ltd. before DTCP.
21. The respondent submitted that later, M/s Prime IT Solutions Pvt. Ltd. and developer had 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 Solution Pvt. Ltd. in favour of developer whereby M/s Prime IT Solutions Pvt. Ltd. has agreed to sell, transfer and convey the said property in favour of Imperia Wishfield Pvt. Ltd. And the said GPA was 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 the letter of intent was granted 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. Thereafter, the respondent applied for environment clearance vide application dated 06.11.2012 and was granted the same for the construction of the said project. Further, the building plan was sanctioned by DTCP on 25.06.2013. Other necessary permissions and sanctions as clearance from DTCP for forest clearance and NOC for height clearance from Airport Authority of India were also obtained.
23. The respondent has submitted that they had filed a suit titled *Imperia Wishfield Private Limited versus Prime IT Solution Private Limited and others* whereby seeking 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 deed and issued direction to prepare the decree sheet accordingly. In the terms of decree sheet judgement and sanctioning of mutation no. 2117 for transfer of the ownership of project land to Imperia Wishfield Private Limited, Imperia Wishfield Pvt. Ltd. was declared the owner of the property in question.



24. The respondent submitted that by virtue of acts in law, above permissions and court decree, the respondent have the absolute right to market, sell, allot plots, etc. and as such became competent to enter into agreement.
25. The respondent submitted that the construction at the site is being done in phase and in going on full swing. It was submitted that any delay in delivering the possession to the complainants cannot be attributed upon the respondent due to force majeure events, which were beyond the control of the respondent. 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.
26. The respondent submitted that it 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.
27. The respondent submitted that as per the terms and conditions stipulated in the builder buyer agreement, the construction of the said unit was to be completed within 60



months from the date of execution of the builder buyer agreement. Therefore, the complainants are trying to arm twist and narrates the fact in their favour.

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:

28. In respect of **first issue** raised by the complainants, 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. Also, the respondent has alleged and placed on record the building plan which was approved in respect of the said project on 25.06.2013 and the license which was granted on 12.05.2012. The respondent received environmental clearance, consent to establish on 07.11.2014 and 11.05.2015, respectively.

29. In respect of **second issue** raised by the complainants, as per the report of the local commissioner, the project is 42.20% financially completed and 30% of physical work has been



completed. The construction on the site has not been abandoned by the respondent as per the report of local commissioner, therefore, refund cannot be allowed in the present complaint.

30. In respect of **third issue** raised by the complainants, as the buyer's agreement has not been executed between the parties inter se, therefore, by virtue of allotment letter dated 23.09.2013, the possession was to be handed over to the complainants within a period of 60 months which comes out to be 22.09.2018. The possession has been delayed by 4 months and 15 days till date of decision. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso read with rule 15 of the rules ibid, to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession.

31. 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 not carried out in accordance with the sanctioned plans and approvals or whether the respondent, in the first place, had no 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.

Findings of the authority

32. **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 complainants 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.

33. 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. The **report of local commissioner dated 30.01.2019** has been received and the same has been placed on record. The operative part of said report is reproduced below –

“For project ‘ELVEDOR’ 2.00 acres of land being developed by M/s. Imperia Wishfield P. Ltd.

Since the estimated cost and expenditure incurred figures are available for the project ‘ELVEDOR’ the overall progress of the 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 has been completed physically is about 30% approximately.

34. 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 wrangling 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.

35. By virtue of allotment letter dated 23.9.2013, the possession was to be handed over to the complainants within a period of 60 months which comes out to be 22.09.2018 and the respondent has failed to handover possession of the said unit till date to the complainants. As such, the complainants are entitled to get interest for the delayed period as per the provisions of section 18(1) of the Act ibid till offer of possession.

36. 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

37. 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 directed to complete the project in time and offer the possession to complainants within the stipulated time period as stated in application for RERA registration i.e. by March, 2020.
- ii. The respondent is directed to pay the interest so accrued on the amount paid by the complainants at the prescribed rate for every month of delay from the due date of possession i.e. 22.09.2018 till offer of possession.
- iii. The respondent is directed to pay accrued interest to the complainants from the due date of possession till the date of decision, on account of delay in handing over possession to the complainants within 90 days from the date of decision. Thereafter, the monthly payment of



interest till handing over of the possession, so accrues shall be paid by 10th of every succeeding month.

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

38. The order is pronounced.

39. Case file be consigned to the registry.

(Samir Kumar)

Member

(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 06.02.2019

Judgement uploaded on 28.03.2019

HARERA
GURUGRAM

