

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

Complaint no. : 630 of 2018
First date of hearing : 28.02.2019
Date of decision : 19.03.2019

Anurag Upadhyaya
Bhavna Upadhyaya
R/o : 902, A3, Tulip White, Sector 69,
Gurgaon, Haryana-122018

Complainants

Versus

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

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sushil Yadav Advocate for complainants

Shri Rohit Sharma, Authorized Advocate for respondent
Representative

ORDER

1. A complaint dated 30.07.2018 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 Anurag Upadhyaya and Bhavna Upadhyaya against the promoter M/s



Imperia Wishfield Pvt. Ltd. on account of not delivering the possession of the unit described below 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.	3-S02
6.	Unit area	659 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	08.10.2012
12.	Date of studio apartment buyer agreement	Not executed
13.	Total consideration	Rs 37,15,765/- (as alleged by the complainants)
14.	Total amount paid by the complainant	Rs 09,06,101/- (as alleged by the complainants)



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 complainants and respondent. An allotment letter dated 06.04.2014 issued by the respondent in the name of complainant is available on record. Studio 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 respondent for filing reply and for appearance. Accordingly, the respondent appeared on 28.02.2019. The case came up for hearing on 28.02.2019. The reply has been filed by the respondent on 06.11.2018 which has been perused.

Facts of the complaint :

5. The complainants submitted that the respondent gave advertisement in various print as well as electronic media about their forthcoming project named “Imperia Elvedor” at



Sector-37C, Gurugram promising various advantages like world class amenities and timely completion of the project.

6. Relying on the promise and undertakings given by the respondent in the aforesaid advertisements, the complainants booked a studio apartment in the project in question.
7. The complainants submitted that the respondent allotted unit no 3-S02 in the Imperia Elvedor to the complainant.
8. The complainants also submitted that the respondent did not send the copy of builder buyer agreement.
9. The complainants also submitted that they received the demand letter from the respondent and they were shocked to see that the respondent has changed the project i.e “Imperia Elvedor” to “37 Avenue” without permission and consent of the complainants. It is pertinent to mention here these are two different projects. Both projects have different layout, project details, unit size etc.
10. The complainants also submitted that despite of several requests, the respondent was not able to complete project and has failed to deliver the project for the last 6 years.



11. The complainants also submitted that they requested the respondent several times to refund the said amount of the said studio apartment but the interactions and altercations advanced from the side of respondent clearly portrays that the respondent have turned malafide and no intentions to make the payment.

12. The complainants also submitted that the respondent has not obtained license in their name and collecting money without having registered license for the development of the said property.

Issues to be decided

13. The issues raised by the complainants are as follows :-

- i. Whether the respondent has abandoned the project and is liable to refund the amount along with interest to the complainants ?
- ii. Whether the respondent has failed to provide possession of the unit in question without any reasonable justification.



Relief sought

14. The relief sought by the complainants is as follows :-
- Direct the respondent to refund Rs. 9,06,101/- along with 24% interest per annum.

Respondent's reply

15. 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.
16. 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.



17. 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 19.03.2012. It was further submitted by the respondent that they had obtained all necessary permissions and sanctions for the commercial project in question.

18. 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.

19. The respondent has submitted that they had filed a suit titled Imperia Wishfield P. Ltd. versus Prime IT Solution P. Ltd. whereby the relief of declaration alongwith consequential relief of permanent injunction against the Prime IT Solution P. Ltd. and landowners. The hon'ble civil court has passed the order in the shape of compromise decree in and issued direction to prepare the decree sheet accordingly. The decree sheet judgement and sanctioning of mutation no. 2117 for transfer of the ownership of project land to Imperia Wishfield P. Ltd. was declared the owner of the property in question.



20. 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.
21. The respondent submitted that the construction at the site is being done in phase and in going on full swing. It was further submitted by the respondent that the complainant is bound by the terms of the application form and therefore the dispute if any falls within the ambit of civil dispute and all other allegations levelled by the complainant are false and baseless.

Determination of issues :-

22. 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:

- i. As regards **first and 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. The respondent was liable to complete the project in question within a period of 60 months but the respondent has miserably failed to



complete the project, thus, creating a situation where the poor complainant stands nowhere. Keeping in view the current status of the project in question, the complainants are entitled to refund of total money deposited by them with the respondent.

Findings of the authority

23. 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.
24. 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.



25. **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.
26. 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.
27. 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.



28. **Objections raised on behalf of the respondent to the report of local commissioner:** The respondent 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.
29. The respondent 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.



30. The respondent 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.

31. The respondent 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*".

32. The respondent 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.

33. The respondent 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".

34. The respondent 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.

35. The respondent 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.

36. The respondent 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.

37. The respondent 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.

38. The respondent 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.

39. The respondent specifically refutes the correctness of this calculation. The same is arbitrary, whimsical and lacks any rational. It had been brought to the attention of the local commissioner that substantial expenditure had been incurred by the respondent in making payment to the landowners/ Prime IT Solutions Private Limited and also in payment of external development charges, infrastructure development charges.

40. 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.

41. In the present case the authority has observed that by virtue of this complaint, the complainants are seeking directions of the authority to direct the respondent to refund the amount



deposited in lieu of booking of unit no. 3-S02 in the project “Elvedor”, Sector 37, Gurugram. No builder buyer agreement to this effect was executed inter-se the parties. Complainants booked a commercial space no. 3-S02 in the project “Elvedor” admeasuring 659 sq. ft which was later on unilaterally changed to Imperia Elvedor, Sector 37-C Gurugram by the respondent without getting his consent. Matter remained under dispute since long and as a result of which no BBA could be executed inter-se the parties. Vide letter dated 06.04.2014, respondent has sent a clarification with regard to confirmation of allotment of the commercial space in the original project i.e. Elvedor. The complainant has so far paid an amount of Rs.9,06,101/- against total sale consideration of Rs.37,15,675/- which is a part payment. Now, the option is given to the complainants if they still wants to continue in the project. Later on vide letter dated 16.05.2016, a demand notice was sent to the complainants with regard to changed location. It means that situation remains at the same place from where it started i.e. there is dispute with regard to allotment of the unit/space in Elvedor Imperia which is not



fair on the part of the respondent, as such, the complainants are fully entitled to seek refund along with prescribed rate of interest on account of unilateral action on the part of the respondent. The project was to be completed within a period of 60 months but the respondent has miserably failed to complete the project, thus, creating a situation where the poor complainant stands nowhere. Both the projects are distinct as both have been separately registered and licences are different for each project. As per report of the local commissioner appointed in the matter, the project is financially complete by 43% while physically it is 30% complete.

Decision and direction of the authority: -

42. 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. Considering all the pros and cons of the matter, the respondent is directed to refund total amount deposited by the complainants along with prescribed rate of interest



i.e. 10.75% per annum from the date of respective payments.

ii. The respondent is directed to comply with the order within a period of 90 days from the date of issuance of this order.

43. Complaint stands disposed of in above terms.

44. File be consigned to the Registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated : 19.03.2019

Judgement uploaded on 17.04.2019

HARERA
GURUGRAM

