

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

Complaint no. : 1220 of 2018
First date of hearing : 24.01.2019
Date of decision : 05.03.2019

1. Anjali Singh
2. Ajay Kumar

R/o House no 507, Sector 29A, Chandigarh-
160030

Complainants

Versus

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

Respondent

CORAM:

Dr K.K. Khandelwal
Shri Subhash Chander Kush

Chairman
Member

APPEARANCE :

Mr Parikshit Kumar Advocate for complainants
Mr JK Dang and Mr Ishaan Advocate for respondent
Dang

ORDER

1. A complaint dated 09.10.2018 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 Smt. Anjali Singh and Shri Ajay Kumar, against the promoter M/s Imperia



Wishfield Pvt. Ltd. in respect of unit described below in the project namely “Elvedor”, located at sector 37 C, Gurugram for violation of the obligations of the promoter under section 11(4)(a) of the Act.

2. Since the studio apartment buyer agreement was issued on 20.11.2013 i.e prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for non-compliance of obligation on the part of the respondents/ complainant, as the case may be under section 34(f) of the Act *ibid*.
3. 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 colony
3.	Project area	2 acres
4.	Unit no.	9-A15, Tower Evita, 9 th floor
5.	Unit area	659 sq. ft
6.	DTCP license	47 of 2012 (expired)
7.	Registered/ un registered	Not registered
8.	RERA registration no.	Not applicable
9.	Completion date as per RERA certificate	Not applicable
10.	Date of booking	30.03.2012



11.	Date of studio apartment buyer agreement	20.11.2013
12.	Total consideration	Rs. 44,25,088/- (As per applicant file dated 21.11.2016)
13.	Total amount paid by the complainant	Rs. 39,01,947/- (As per applicant file dated 21.11.2016)
14.	Payment plan	Construction Linked Plan
15.	Date of delivery of possession (As per clause 11 (a) : within a period of 60 months from the date of agreement)	20.11.2018
16.	Delay of number of months/ years upto 05.03.2019	3 months

4. The details provided above have been checked as per the case file available on record provided by complainants and respondent. A studio buyer agreement dated 20.11.2013 executed between both the parties is available on record.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 24.01.2019 and 05.03.2019. The reply has been filed by the respondent on 19.11.2018 and the same has been perused.



Facts of the complaint: -

6. The complainants submitted that the respondent is a company engaged in the business of construction and development of residential and commercial projects. During the course of its business, the respondent launched a residential-cum-commercial project originally known as Esfera Elvedor, situated at Sector – 37C, Gurgaon, Haryana, India in and about the year 2012.
7. The complainants submitted that he accordingly vide an application form dated 30.03.2012, applied for allotment of one studio apartment having a super area of 625 sq. ft in the project namely Esfera Elvedor.
8. It is relevant to note that at the time of applying for the studio apartment, the complainants was informed that the respondent had the complete right, title and authorization on the project land and also had the requisite sanctions and approvals from the relevant authorities to undertake such construction. It was further informed that the project will be completed within a period of 60 months from the date of



booking and the respondent will be handed over possession of the studio apartment in question in the said time period.

9. The complainants submitted that on the basis of such representations they had paid a sum of Rs. 3,00,000 vide a cheque bearing no. 395188 dated 30.03.2012. The respondent issued receipt dated 30.03.2012 for the booking amount.
10. The complainants also submitted that the respondent issued an acknowledgment letter dated 08.05.2012 wherein the respondent acknowledged the receipt of Rs 3,00,000/- as a booking amount.
11. The complainants also submitted that the respondent also issued a welcome letter dated 08.05.2012 wherein the complainants were acknowledged as a customer for apartment measuring 625 sq. ft in tower 'Rubix'. Thereafter the respondent again issued welcome letter dated 31.07.2012, vide the respondent unilaterally changed the area of the booked unit from 625 sq. ft to 659 sq. ft.
12. The complainants submitted that after a year from the date of booking, the respondent issued an a letter dated 08.03.2013 vide which the respondent allotted a studio apartment



bearing unit no 7_S15 on the 7th floor in tower B to the complainants. However the respondent unilaterally changed the booking and confirmed allotment for the unit no 9-A15 on the 9th floor in tower Evita without obtaining any consent of the complainants.

13. The complainants submitted that it is relevant to note that in terms of the studio buyers agreement, the respondent represented that the project was being constructed on a land admeasuring 16canals (2 acres) situated in the revenue estate of Garauli Khurd, Tehsil and District Gurugram in Section 37C, Gurugram. It was further 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 favour of M/s Prime IT Solutions Private Limited . The said Prime IT Solutions subsequently applied for and purportedly obtained a license from DTCP, Haryana 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. Believing such representations to be true, the complainants executed the studio buyers agreement dated 20.11.2013.

14. The complainants submitted that as such all the representations provided by the respondent in terms of the buyers agreement were found to be deceptive and false. The complainant also became aware of the fact that:

- (a) 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 the 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.

- (b) 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 i.e. prior to receipt of last payment. Further, the respondent did not even have the license to construct up to 15th floor as evidenced from the sanctioned plan available on the website. These essential facts were also actively suppressed.

15. Subsequently, the complainant and her husband has also become aware of the fact that:

- (a) The collaboration agreement dated 6.12.2012 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.

(b) The complainant 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 buyers agreement, no sale had taken place and neither was any registered development agreement executed.

(c) 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 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 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 to be decided

17. The issues to be determined are as follows :-
- Whether the respondent has misrepresented to the complainant that it has necessary sanctions and approvals in place to undertake construction of the proposed project?
 - Whether the respondent has undertaken construction of the proposed project in accordance with sanctioned plans?



- iii. Whether the respondent has abandoned the project and is liable to refund the amount alongwith interest to the complainant?
- iv. Whether the respondent has failed to provide possession of the unit in question without any reasonable justification.
- 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?

Relief sought:-

18. The reliefs sought by the complainants are as follows :-
 - i. Direct the respondent to refund Rs. 39,01,947/- along with 18% interest per annum 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 complainants have 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 respondent. 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 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.

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 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

26. After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issues wise findings of the authority are as under:

- i. As far as **issue no. 1 and issue 2** is concerned the complainants have failed to produce any iota of evidence in support of their allegation that the respondent was not having valid sanctions and approvals to undertake construction of the proposed project.

However, it is also 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

- ii. As regards **remaining issues**, keeping in view the current status of the project, the authority in the interest of the project and other allottees, cannot allow the relief of refund. The promoter has failed to deliver the possession



of the booked unit on the due date i.e 20.11.2018. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso to pay interest to the complainants, at the prescribed rate for every month of delay till the handing over of possession.

Findings of the authority: -

27. 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 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.



28. In the present case the authority has observed that as per clause 11(a) of the agreement executed between the parties, the possession of the booked unit no. 9-A15, tower Evita, 9th floor in project Elvedor, Sector 37-C, Gurugram was to be handed over to the complainants within a period of 60 months from the date of execution of agreement which comes out to be 20.11.2018. Complainants has so far paid an amount of Rs.39,01,947/- against total sale consideration of Rs.44,25,088/-. Till today, respondent has failed to deliver the booked unit to the complainants.
29. As per statement made by the counsel for the respondent the fresh date indicated by the promoter for completion of project is March 2020. Keeping in view the present stage of construction and also interests of other allottees in the project, the complainant is entitled to interest for every month of delay at prescribed rate of 10.75% till actual possession is handed over after completion of the project and obtaining occupation certificate.



30. The complainant shall be at liberty to approach this authority, in case, dead line as declared by the promoter regarding handing over the possession to the complainant is not met.

Decision and direction of the authority: -

31. 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 respondent is directed to pay the accrued interest so far w.e.f. 21.11.2018 to the date of issuance of this order i.e 05.03.2019 to the complainants within a period of 90 days and thereafter on or before 10th of every subsequent month till final offer of possession.

32. Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation and Development) Act,2016 for violation of section 3(1) of the Act be issued to the respondent

33. The order is pronounced.



34. Case file be consigned to the registry.
35. A copy of this order be endorsed to the registration branch.

(Dr K.K. Khandelwal)
Chairman

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 05.03.2019

Judgement uploaded on 25.04.2019



HARERA
GURUGRAM

