

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

Complaint no. : 1134 of 2018
First date of hearing : 02.01.2018
Date of decision : 06.02.2018

Shri Rajinder Singh Dahiya
H. No. 414, Sector-46,
Faridabad -121010

Complainant

Versus

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

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Parikshit Kumar Advocate for complainant
Shri Rohit Sharma Authorized representative on
behalf of respondent company
Shri J.K Dang and Shri Ishaan Advocates for 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 complainant Shri Rajinder Singh Dahiya against the promoter M/s Imperia Wishfield Pvt.



Ltd. on account of not delivering the possession of the booked studio apartment/unit no. floor 6-A05 on the 6th admeasuring 659 sq. ft. in the project namely “Elvedor”, located at Sector 37 C, Gurugram. On account of violation of the clause 11 of retail space buyer’s agreement executed on 05.12.2013 in respect of retail space described as below for not handing over possession by the due date i.e.05.12.2018, which is an obligation of promoter under section 11(4)(a) of the Act ibid.

2. Since, the buyer’s agreement has been executed on 05.12.2013 i.e. prior to the commencement of the Real Estate (Regulation And Development) Act, 2016, therefore, the penal proceedings cannot 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: -

*** DTCP license: 47 of 2012**

*** Nature of real estate project: Commercial project**



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	Tower Evita constructed upto 15 th floor (As per para 15 of the complaint-filled)
5.	Unit no.	7-A05 on the 7 th
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.	Date of studio apartment buyer agreement	05.12.2013
11.	Total consideration	Rs. 45,19,819/-
12.	Total amount paid by the complainant	Rs.39,72,547/-as per statement of complainant
13.	Payment plan	Construction Linked Plan
14.	Date of delivery of possession (As per clause 11 of studio apartment buyer agreement: within 60 months from the date of agreement)	05.12.2018
15.	Delay of number of months/ years	2 months



3. The details provided above have been checked as per the case file available on record provided by complainant and respondent. A studio apartment buyer agreement dated

05.12. 2013 executed between both the parties is 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 02.01.2018. The case came up for hearing on 02.01.2018 and 06.02.2019. The reply has been filed by the respondent which has been perused.

Facts of the complaint: -

5. The complainant submitted that the respondent launched a residential-cum-commercial project originally known as “Esfera Elvedor”, situated at Sector – 37C, Gurugram, Haryana, India (hereinafter referred to as the “**Project**”) in and about the year 2012.
6. The complainant submitted that at the time of applying for the studio apartment, the complainant 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 complainant will be handed over possession of the studio apartment in question in the said time period.

7. The complainant submitted that the vide an application form dated 16.10.2012, applied for allotment of one studio apartment in the project namely Elvedor having a super area of 659 sq. ft. situated on the 6th floor of the project. In terms of the application form, the complainant was required to remit payments in accordance with a construction linked plan as set out therein. A copy of the application form dated 16.10.2012 is annexed hereto and marked as **ANNEXURE C - 1**.
8. The complainant submitted that the complainant on the basis of such representations paid an amount of Rs. 3,51,576/- (rupees three lakhs fifty one thousand five hundred and seventy six only) vide a cheque bearing nos. 008007 dated 16.10.2012 a copy of which is annexed herewith and marked as **ANNEXURE C - 2**. Pursuant to this payment, the respondent issued a receipt dated 16.10.2012; (printed on 26.11.2012) for the booking amount, a copy of which is annexed herewith and marked as **ANNEXURE C - 3**.



9. The complainant submitted that respondent had not issued any allotment letter till this point in time nor provided any buyers agreement, however, the respondent issued a demand letter dated 17.11.2012 calling upon the complainant to pay a further amount of Rs. 5,54,525/- in terms of the payment plan. A copy of the demand letter dated 17.11.2012 is annexed hereto and marked as **ANNEXURE C-5**.
10. The complainant submitted that the complainant issued 2 cheques bearing no. 223003 and 008008 both dated 01.12.2012 favor of the respondent for a sum of Rs. 4,90,000/- (rupees four lakhs ninety thousand only) and Rs.64,525/- (rupees sixty four thousand five hundred twenty five only) respectively. A copy of the 2 cheques both dated 01.12.2012 for a sum of Rs. 4,90,000/- and a sum of Rs. 64,525/- are annexed herewith and marked as **ANNEXURE C- 6**. The respondent also issued two receipts dated 03.12.2012 (printed on 03.12.2012) acknowledging receipt of the amount. A copy of the receipts Are annexed herewith and marked as **ANNEXURE C-7**.



11. The complainant submitted that after receiving 25% of the total basic price, the respondent did not intimate any timeline within which the buyer's agreement would be executed. After 7 months from the date of booking, the respondent provided a letter dated 10.05.2013 pursuant to which the respondent confirmed having allotted a studio apartment bearing unit no. 6_A05 on the 6th floor in tower B in the commercial project "Elvedor Studio Apartments" at Sector 37-C, Gurgaon, Haryana admeasuring 659 sq. ft. at the basic sale price of Rs. 5,335/- per sq. ft., other additional charges of Rs. 8,28,266/- (rupees eight lakhs twenty eight thousand two hundred and sixty six only) and preferential location charges (PLC) of Rs. 1,75,788/- (rupees one lakh seventy five thousand seven hundred and eighty eight). Copy of the confirmation of unit allotment letter dated 10.05.2013.



12. The complainant submitted that respondent, subsequently, issued an allotment letter dated 21.09.2013 wherein the respondent again unilaterally changed the allotment of the commercial unit to 7_A09 without obtaining the consent of the complainant. It was further assured that the buyer's

agreement will be sent to the complainant shortly. A copy of the allotment letter dated 21.09.2013 is annexed herewith and marked as **ANNEXURE C - 9**. The complainant protested against such unilateral changes and the fact the 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.

13. The complainant submitted that the respondent also issued a demand letter dated 07.10.2013 raising a fresh demand at the start of excavation for a sum of Rs. 3,62,442/- (rupees three lakhs sixty two thousand four hundred and forty two only). A copy of the demand letter dated 07.10.2013 is annexed herewith and marked as **ANNEXURE C- 10**. It is pertinent to note that the respondent further informed the complainant that construction is being commenced on the project and that bhumi poojan has been completed on 05.10.2013. A copy of the letter dated 07.10.2013 intimating the start of construction is annexed hereto as **ANNEXURE C - 11**.

14. The complainant submitted that considering the assurances of the respondent that construction of proposed project was



being commenced (albeit after 1 year from the date of booking) and to avoid any penal interest, the complainant released the payment against the demand letter dated 07.10.2013. A copy of the two receipts issued by the respondent dated 14.10.2013 (printed on 14.10.2013) signifying deposit of payment by the complainant is annexed hereto and marked as **ANNEXURE C - 12**.

15. The complainant submitted that thereafter, vide a letter dated 29.11.2013, the respondent also supplied a copy of the buyer's agreement. For reasons best known to the respondent, such letter was withdrawn and another letter dated 05.12.2013 enclosing a separate buyers agreement in respect of unit no. 7_A09 situated in tower 'Evita' in the project "Elvedor Studio", Sector 37C, Gurgaon Haryana was sent by the respondent.
16. The complainant submitted that it is relevant to note that in terms of the studio buyer's agreement, the respondent represented that the project was being constructed on a land admeasuring 16 canals (2 acres) situated in the revenue estate of Garauli Khurd, Tehsil and District Gurgaon in Section 37C, Gurgaon. 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 favor of M/s Prime IT Solutions Private Limited ("**Prime IT Solutions**"). 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.

17. The complainant submitted that in terms of the buyer's agreement, the total basic sale price was shown as Rs. 35,15,765/- (at the rate of Rs. 5335/- per sq. ft. for a total super area of 659 sq. ft.), PLC were shown as Rs. 1,75,788/- IFMS of Rs. 65,900/- and other charges at Rs. 7,62,366/-. Thus the total sale price (inclusive of all charges) was reflected as 45,19,819/-.



18. The complainant submitted that as per the demand letters, the respondent had purportedly undertaken construction up till the 15th floor by May 2016 itself. Simultaneously, as evidenced by various receipts, the complainant had paid a sum of Rs.39,72,547/- (rupees thirty nine lakhs seventy two thousand five hundred and forty seven only) by June 2016 out of a total sale price of Rs. 45,19,819/- as specified in the buyer's agreement.
19. The complainant submitted that a license / letter of intent was issued in favor of Prime IT Solutions Private Limited (and not the respondent) on 24.05.2011, a copy of which is annexed herewith as **ANNEXURE C-48**. 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.

20. The complainant submitted that seeing that the project had remained stalled for 2 years and upon gaining knowledge that there were several issues with respect to the project in question, the complainant accordingly made several requests to the respondent and also issued three letters dated 30.07.2018, 17.08.2018 and 20.08.2018 requesting the respondent to refund the entire amount which the complainant has paid towards the said allotment along with interest, however, the respondent has refused to entertain any legitimate request for refund of amounts and further did not provide any written response to the above requests.

21. The complainant submitted that Subsequently, the complainant has also become aware of the fact that:

- i. 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.

- ii. 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.
- iii. 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.

22. The complainant 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

23. The issues raised by the complainant are as follows :-
- i. **Whether the respondent has misrepresented to the complainant that it has necessary sanctions and approvals in place to undertake construction of the proposed project?**
 - ii. **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:-

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

- i. Pass appropriate directions to the respondent directing a refund of the amount of Rs. 39,72,547/- (rupees thirty nine lakhs seventy two thousand five hundred and forty seven only);
- 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. 39,72,547/- (rupees thirty nine lakhs seventy two thousand five hundred and forty seven only) from the date of deposit till the date of actual receipt;
- iii. Pass any other order as the hon'ble authority may deem fit in the interest of justice.



Respondent's reply : -

25. The respondent has denied each and every allegations and contentions raised by the complainant. It is 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.

26. 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.

27. 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.

28. 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.

29. 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 Pvt. Ltd. was declared the owner of the property in question.

30. 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.



31. 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.

Report of the local commissioner

32. DTCP licenced no. 47 of 2012 dated 17.05.2012 was issued in favour of Prime I.T solutions Pvt. Ltd. and other in Sector-37 C, Gurugram. Neither licence nor building plan was approved by DTCP in favour of M/s Imperia Wishfield Pvt. Ltd.
33. State Environment impact assessment authority of Haryana issued environmental clearance in 2014 for construction of 01 block + 02 basement + maximum 12 floors, however, M/s Imperia Wishfield Pvt. Ltd. has constructed basement 2 levels + GF + 14 floors for which they don't have any permission/clearance of SEIAA.
34. 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 24.01.2019. Keeping in view above facts and figures, it is reported that the work has been completed with respect to financially is 42.20% where as the work has been completed physically is about 30% approximately.

Objections raised on behalf of the respondent to the report of local commissioner

35. 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.

36. 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.

37. The said report deserves to be disregarded, ignored and discarded for all intents and purposes. In case the completely flawed, absolutely illegal and perverse report is considered or taken into reckoning for adjudication of the present litigation, the same is bound to result in an incorrect decision being rendered by this honourable authority.

38. 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 licence nor building plan has been approved by Director General, Town and Country Planning, Haryana, Chandigarh in favour of the respondent.

39. As submitted earlier, the complete facts pertaining to the transaction and documents related thereto were sought to be



submitted to the local commissioner during the course of inspection made by him. However, the local commissioner simply refused to even look at the documents which were readily available with the officials of the respondent present at the spot.

40. In the present case, Prime IT Solutions Private Limited had entered into development agreement dated 06.12.2011 bearing vasika number 25315 with Mr Ratan Singh etc. (land owners) for development of a commercial colony over the aforesaid land holding. In furtherance of development agreement dated 06.12.2011 bearing vasika number 25315, application for grant of licence for development of a commercial colony over the land subject matter of said contract had been submitted by Prime IT Solutions Private Limited with Directorate of Town and Country Planning, Haryana, Chandigarh.



41. In furtherance of the aforesaid application, licence bearing number 47 of 2012 and licence bearing number 51 of 2012 had been granted on 12.05.2012 on 17.05.2012 by Directorate of Town and Country Planning, Haryana, Chandigarh.

42. A collaboration agreement had been executed between the respondent and Prime IT Solutions Private Limited in terms of which the respondent was/is entitled to undertake the implementation of the commercial colony over the land subject matter of aforesaid contract. A general power of Attorney dated 19.03.2013 bearing vasika number 1374 had also been executed and registered by Prime IT Solutions Private Limited in favour of the respondent.
43. 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.
44. In the meantime differences had arisen between Prime IT Solutions Private Limited, respondent and the land owners. 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”.



45. That judgment dated 21.01.2016(annexure RC) had been passed by Mr. Sanjeev Kajla the then civil judge, Gurugram 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.
46. 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 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.
47. 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.

48. 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.

49. It has been legally observed by the local commissioner in the report submitted by him that State Environment Impact Assessment Authority of Haryana had granted environmental clearance in the year 2014 for construction of only 12 floors in addition to basement and ground floor and at the spot 14



floors had been constructed by the respondent in violation of the sanction granted.

50. The local commissioner for reasons best known to him was determined to submit a report against the respondent. The officials of the respondent present at the spot had tried to handover to the local commissioner the duly sanctioned plan by State Environment Impact Assessment Authority of Haryana wherein 14 floors were clearly indicated to have been sanctioned. It was brought to the attention of the local commissioner by officials of the respondent that the respondent was comprised of law abiding citizens and had not violated or infringed any provision of law and had not undertaken any development/construction at variance or in infringement of sanctions accorded by the concerned authorities.



51. It has further been erroneously and illegally observed by the local commissioner that no environmental clearance had been obtained by the respondent for construction of building in land measuring 4 acres. This observation made by the local commissioner is also absolutely factually incorrect. In fact,

attention of the local commissioner had been drawn to memo dated 07.11.2014 (annexure RF) whereby environmental clearance had been granted in respect of land measuring 4 acres. However, for reasons best known to local commissioner, this fact has not been mentioned in the report submitted by him. This fact by itself comprehensively establishes that the local commissioner has proceeded in a biased manner.

52. 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.

53. 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.

54. 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.

55. It is, therefore, humbly prayed that in the interest of Justice your honour very kindly pleased to reject, discard and ignored the report submitted by the local commissioner for the reasons submitted above. Any other direction which this honourable authority deems appropriate and suitable may also very kindly be passed in the facts and circumstances of the present case.



Determination of issues :-

56. 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:

57. With respect to **first, second and fifth issues** raised by the complainant is concerned the complainant has failed to produce any iota of evidence in support of her 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 13.10.2013 and it is nowhere stated by the respondent in their reply that they have applied for renewal of said license

58. With respect to the **fourth issue** raised by the complainants, it is observed that as per clause 11 of the flat buyer's agreement dated 05.12.2013 the possession of the said unit is supposed to be delivered within 60 months from the date of signing of the said agreement. Thus, the due date shall be computed from 05.12.2013 and the possession date comes out to be



05.12.2018. Thus, the clause regarding the possession of the said unit is reproduced below:

“11. Schedule for the possession of the said unit

The developer based on its present plans and estimates and subject to all just exceptions/force majeure/ statutory prohibitions/court’s order etc., contemplates to complete the construction of the said building/said unit within a period of 60 months from the date of execution of this agreement

Accordingly, the due date of possession was 05.12.2018 which has already lapsed but the possession has not been delivered till date and therefore, the respondent is liable to pay interest on the delayed possession. Thus, the complainants are entitled for interest on the delayed possession at the prescribed rate of 10.75% p.a. under the Act.

59. With respect to **third issue** raised by complainant, Keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint, it shall hamper the completion of the project. The refund of deposited amount will also have adverse effect on the



other allottees. Therefore, the relief sought by the complainant cannot be allowed.

Findings of the authority: -

60. 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.

61. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter.



62. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

63. Report of local commissioner dated 30.01.2019 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 24.01.2019. 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.

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”.

64. 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.

65. 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, 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.

66. The homebuyer has entered into a BBA with M/s Imperia Wishfield Pvt. Ltd. on 05.12.2013 and the possession of the unit was to be handed over to the complainant within a period



of 60 months which comes out to be 05.12.2018. As such, the complainant is entitled to get interest for the delayed period @ 10.75% per annum w.e.f. 05.12.2018 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

67. It has been averred by counsel for the respondent that they have applied for transfer of license with DTCP and registration of project with RERA authority. As per the registration application, the revised date of delivery of possession is March 2020.

Decision and direction of the authority: -

68. 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 duty bound to pay the interest at the prescribed rate i.e. 10.75% for every month of delay



from the due date of possession w.e.f 05.12.2018 till offer of possession.

- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.
- iii. The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.

69. The order is pronounced.

70. 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 19.04.2019

