

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

Complaint no. :	1168 of 2021
Date of filing complaint:	09.03.2021
First date of hearing:	17.05.2021
Date of decision :	14.09.2022

Ashok Sur R/O: C/o Northern Refrigeration Company, 32, Hazratganj, Lucknow, Uttar Pradesh-226001	Complainant
Versus	
1. M/s Imperia Wishfield Pvt. Ltd. Regd. office: A-25, Mohan Cooperative Industrial Estate, New Delhi-110044 2. Prime IT Solutions Pvt. Ltd. Regd. Office: B-33, First Floor, Shivalik Colony (Near Malviya Nagar), New Delhi-110017	Respondents

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Sukhbir Yadav (Advocate)	Complainant
Sh. Himanshu Singh (Advocate)	Respondent no. 1

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation



and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"Elvedor", Sector 37 C, Gurugram
2.	Nature of the project	Commercial Project
3.	Project area	2 acres
4.	DTCP license no.	47 of 2012 dated 12.05.2012 valid upto 11.05.2016
5.	Name of licensee	Prime IT Solutions
6.	RERA Registered/ not registered	Not registered
7.	Date of Allotment Letter	17.04.2014 (Page 49 of complaint at annexure P3)

8.	Unit no.	15_A16, 15 th Floor, Tower E-vita (Page 62 of complaint)
9.	Unit area admeasuring (super area)	436 sq. Ft. (Page 62 of complaint)
10.	Date of apartment buyer agreement	04.07.2014 (Page 52 of complaint and also alleged by complainant)
11.	Possession clause	<p>11 (a) Schedule for possession of the said unit</p> <p>The company based on its present plans and estimates and subject to all exceptions endeavors to complete construction of the said building/said unit within a period of sixty (60) months from the date of this agreement unless there shall be delay or failure due to department delay or due to any circumstances beyond the power and control of company or force majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the allottee(s) to pay in time the total price and other charges and dues/payments mentioned in this Agreement or any failure on the part of the Allottee(s) to abide by all or any of the terms and conditions of this Agreement.</p>
12.	Due date of possession	04.07.2019 (Calculated as per BBA)

13.	Total sale consideration	Rs. 30,96,106/- (As per BBA on page 62 of complaint)
14.	Amount paid by the complainants	Rs. 17,30,451/- (As alleged by the complainant in CRA form)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not obtained

B. Facts of the complaint:

3. That in Feb 2013, complainant/petitioner, Mr. Ashok Sur received a marketing call from a real estate agent namely Mr. Anuj, who represented himself as an authorized agent of the respondent company and marketed a commercial project namely "Elvedor" situated at Sector-37C, Gurugram. The complainant visited the Gurugram office and project site of the respondent/builder with the family members where he met with the marketing staff of builder and got information about the project. The marketing staff of the respondent through a brochure and representations projected and assured that the project shall be an architectural and conceptual masterpiece.
4. That, believing on representation and assurance of respondent, the complainant Mr. Ashok Sur, booked two studio apartment bearing no. 15_A16 & 15_A13 on 15th floor of tower Evita for tentative size admeasuring 436 sq. ft. on 04.02.2013 and issued two Cheque of Rs. 2,75,000/- (Two Lakh Seventy-Five Thousand) each vide cheque No. "525982" dated 28.01.2013, drawn on Yes Bank & cheque No. "634375" dated 03.02.2013 drawn on ICICI Bank, for booking amount and signed a



pre-printed application form. The studio was purchased under the construction linked plan for a sale consideration of Rs. 30,96,106/(Thirty Lakh Ninety-Six Thousand One Hundred Six).

5. That on 17.04.2014, the respondent issued two allotment letters in name of Mr. Ashok Sur, conforming to the allotment of both Studio No. 15_A16 & 15 A13 on the 15th Floor of tower Evita for tentative size admeasuring 436 sq. ft.
6. Thereafter, after a long follow-up, on 04.07.2014 a pre-printed, unilateral, arbitrary studio apartment buyer agreement/buyer's agreement was executed inter-se the parties for studio bearing no. 15_A16. According to Clause 11(a) of the said agreement, the respondent had to give possession of the said studio within a period of (60) months from this agreement. It is germane that the BBA was executed on 04.07.2014, hence the due date of possession was 04.07.2019. It is pertinent to mention here that initially at the time of booking the respondent has assured that the studio will be handed over to the complainant within 42 months from the date of booking but later on the respondent extended the due date of delivery of the unit.
7. That, thereafter the complainant requested the respondent to merge the payment of both the units booked by him in one studio apartment, therefore, on request of the complainant, the respondent merged the payment of Unit No. 15_A13 in unit No. 15 A16 on 28.04.2015.
8. That the complainant kept paying the demands raised by the respondent till 26.07.2017. But when the complainant observed that the respondent has stopped the construction of the project, he stopped the clearance of two post-dated cheques dated 21.09.2016 & 20.12.2016.

9. On 21.09.2018, the complainant even visited the office of the respondent and asked for the status of the project but the same was not provided to him.
10. That as per the statement of account dated 21.09.2018, issued by the respondent, the complainant has paid Rs. 17,30,451/- (Seventeen Lakh Thirty Thousand Four Hundred Fifty-One) till 22.07.2016 i.e., more than 55% of total sale consideration. That since 2019, the complainant is regularly visiting the office of respondent as well as the construction site and making efforts to get the possession of allotted studio but to no avail.
11. That the main grievance of the complainant in the present complaint is that despite the complainant having paid more than 55% i.e. 17,30,451/ (Seventeen Lakh Thirty Thousand Four Hundred Fifty-One) of the actual amount of studio, the respondent has miserably failed to deliver the unit.
12. That for the first-time cause of action for the present complaint arose in July 2014, when the buyer agreement containing unfair and unreasonable terms was, for the first time, forced upon the allottees. The cause of action further arose in July 2019, when the respondent party failed to hand over the possession of the studio as per the buyer agreement. Further, the cause of action again arose on various occasions, including on: a) Jan. 2020; b) Feb. 2020, c) March 2020 (d) November 2020, (e) January 2021, and on many time till date, when the protests were lodged with the respondent party about its failure to deliver the project and the assurances were given by them that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this Hon'ble

Authority restrains the respondent party by an order of injunction and/or passes the necessary orders.

13. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent party and as such, he is liable to be punished and compensate the complainant. That the complainant being an aggrieved person filing the present complaint under section 31 of the Act, with the Authority for violation/contravention of provisions of this Act. The complainant now wishes to withdraw from the project as the promoter has not fulfilled his obligation therefore as per obligations on the promoter under section 18(1) & 19(4), the promoters obligated to refund the paid amount along with the prescribed rate of interest.

C. Relief sought by the complainant:

14. The complainant has sought following relief(s):

- (i) Direct the respondent to refund the entire money of the complainant paid to the respondent i.e., Rs. 17,30,451/- along with the interest at prescribed rate from the date of booking till final realisation of payment.
- (ii) Direct the respondent to refrain from giving effect to the unfair clauses unilaterally incorporated in the Buyer Agreement.

D. Reply by respondent:

The respondent no. 1 by way of written reply made following submissions:

15. That the present complaint has been filed by the complainant against the respondent company in respect of the tower- "EVITA" being developed by the respondent company in its commercial project titled as "ELVEDOR



RETAIL" situated at sector-37C, GURGAON, HARYANA (hereinafter 'said project').

16. That unit no. 15_A13 and 15_A16, (hereinafter 'said Units') in tower-Evita (hereinafter 'said Tower') situated in the said commercial project, which had been allotted to the complainant by the respondent company for a total consideration amount of Rs. 35,38,014/-, vide allotment letter/ retail buyer agreement dated 17.04.2014 (hereinafter 'Allotment Letter') on the terms and conditions mutually agreed by the allottee/complainant and the respondent company.
17. That the rights of the present parties are governed by the allotment letter/ agreement executed between the parties on 17.04.2014. It is pertinent to mention here that the project in question i.e., Elvedor is a joint venture project with "Prime IT Solutions Pvt. Ltd." (Prime IT) and this Prime IT was also a licensee company and held a 50% equity in answering respondent company till November 2015.
18. The said project is a commercial project being developed on two acres of land situated at Sector 37-C, Gurugram, Haryana and comprises of retail and studio apartments. The foundation of the said project vest upon the joint venture agreement executed between M/s Prime IT Solutions Pvt. Ltd. and Imperia Structure Pvt. Ltd. lying down the transaction structure for this Project and for creation of SPV company, named and styled as "Imperia Wishfield Pvt. Ltd.". Later, collaboration agreement dated 06.12.2012 as executed between M/s Prime IT Solutions Private Limited (on one part) and M/s Imperia Wishfield Pvt. Ltd. (on the second part). In terms of the said collaboration agreement, the second party i.e., Imperia Wishfield Pvt. Ltd is legally entitled to undertake construction and development of the project at its own costs, expenses and resources



in the manner it deems fit and proper without any obstruction and interference from any other party. The referred collaboration agreement has been signed by representative of M/s Prime IT Solutions Private Limited and Imperia Wishfield Pvt. Ltd. Suffice to mention here that on the relevant date i.e., 06.12.2012 on which the collaboration agreement was signed there are common directors in both these companies i.e., in M/s Prime IT Solutions Private Limited and M/s Imperia Wishfield Pvt. Ltd.

19. That a clear reference of the said collaboration agreement has been given in the said allotment letter/ retail buyer agreement executed between the complainant and the respondent. In the said agreement it is distinctly mentioned that "Prime IT Solutions Private Limited", a company incorporated under the provisions of Companies Act, having its registered office at B-33, First Floor, Shivalik Colony (Near Malviya Nagar), New Delhi-110017, has been granted licence No. 47/2012 by the Director General, Town and Country Planning, Haryana in respect of project land and the respondent company is undertaking implementation of project based on the basis of said collaboration agreement.
20. That in the above collaboration agreement, M/s Prime IT Solutions Private Limited represented and confirmed to the Imperia Wishfield Pvt. Ltd. that it has already obtained Letter of Intent ("LOI") from the Department of Town and Country Planning, Government of Haryana on 24.05.2011 and subsequent license from the Department of Town and Country Planning, Government of Haryana as necessary for setting up a commercial project on the land admeasuring 2.00 acres in the revenue estate of Village Gadoli Khurd, Sector 37 C, Gurugram on 12.05.2012

along with the zoning plan (license no. 47 of 2012, dated 12.05.2012). The building plans of the said project being developed under above mentioned license no. 47 of 2012 was approved on 25.06.2013. It is very pertinent to mention here that even before the execution date of above referred collaboration agreement between M/s Prime IT Solutions Private Limited and Imperia Wishfield Pvt. Ltd., both these companies had under the same management and directors.

21. Further it is also relevant to mention here that in terms of compromise dated 12.01.2016 on whose basis a decree sheet prepared on 21.01.2016 in a suit titled M/s Prime IT Solutions Pvt. Ltd. Vs Devi Ram & Imperia Wishfield Pvt. Ltd. As per this compromise, both M/s Imperia Wishfield Pvt. Ltd. and M/s Prime IT Solutions Pvt. Ltd. apart from other points, agrees to take collective decision for the implementation of the project and all expenses related to the project shall be jointly incurred by both the parties from the dedicated project account which will be in the name of "M/s Imperia Wishfield Limited Elvedor Account."
22. That the said Project suffered a setback on account of non-cooperation by aforesaid JV Partner Le. Prime IT Solutions Private Limited as major part of the collections received from the allottees of this project have been taken away by said JV partner.
23. That for the proper adjudication of the present complaint, it is necessary that M/s Prime IT Solutions Pvt. Ltd. be arrayed as a necessary party. Any coercive order passed without hearing the said necessary party is clearly cause grave prejudice to the Answering Respondent's rights and same is also in contrary to admitted understanding between the parties as contained in the decree dated 21.01.2016.

24. That complainant hasn't approached the Hon'ble Authority with clean hands and bonafide intentions and is guilty of *suppressio veri* and *suggestio falsi*. The Complainant is well aware of the force majeure obstacles and other hindrances, which are beyond the control of respondent, and which are the actual cause of extension of time for handing over the possession. It was submitted that out of total consideration amount of Rs. 35,38,014/-, the complainant has paid the principal consideration amount of 17,30,451/- and thus amount Rs. 18,07,563/- is still payable by the complainant against the said principal consideration amount. Therefore, the present complaint deserves to be dismissed on this ground alone.

25. It was submitted that in clause 11.(a), it is mentioned and duly agreed by the Complainant as under:

"11. (a) SCHEDULE FOR POSSESSION OF THE SAID UNIT: The Company based on its present plans and estimates and subject to all just exceptions endeavors to complete construction of the Said building/Said Unit within a period of sixty (60) months from the date of this agreement unless there shall be delay or failure due to department delay or due to any circumstances beyond the power and control of the Company or force majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failures of the Allottee(s) to pay in time the Total Price and other charges and dues/payments mentioned in this Agreement or any failure on the part of the Allottee(s) to abide by all or any of the terms and conditions of this Agreement. In case there is any delay on the part of the Allottee(s) in making of payments to the Company than notwithstanding rights available to the Company elsewhere in this contract, the period for implementation of the project shall also be

extended by a span of time equivalent to each delay on the part of the Allottee(s) Company”.

26. In view of the above said, the respondent company had intended to complete the construction of the allotted unit on time. It is pertinent to mention that the respondent company had successfully completed the civil work of the said tower/project, and the finishing work, MEP work is remaining of these towers, which is going on and the respondent company is willing to complete the same within next six to twelve months of period, however the delay in handing over the project has occurred due to certain force majeure circumstance, inter alia includes the COVID-19.. That the possession of the unit will be tentatively delivered to its respective allottee(s) in second quarter of 2022 with respective OC on the said project.
27. That, it is relevant to mention herein that several allottees have withheld the remaining payments, which is further severally affecting the financial health of the respondent company and further due to the force majeure conditions and circumstances/reasons, which were beyond the control of the respondent company as mentioned herein below, the construction works got delayed at the said project. Both the parties i.e. the complainant as well as the respondent company had contemplated at the very initial stage while signing the allotment letter/agreement that some delay might have occurred in future and that is why under the force majeure clause as mentioned in the allotment letter, it is duly agreed by the complainant that the respondent company shall not be liable to perform any or all of its obligations during the subsistence of any force majeure circumstances and the time period required for performance of its obligations shall inevitably stand extended. It is unequivocally agreed



between the complainant and the respondent company that the respondent company is entitled to extension of time for delivery of the said unit on account of force majeure circumstances beyond the control of the respondent company and inter-alia, some of them are mentioned herein below:

- (i) That, the respondent company started construction over the said project land after obtaining all necessary sanctions/approvals/clearances from different state/central agencies/authorities and after getting building plan approved from the authority (ALL IN THE NAME OF PRIME IT) and named the project as "ELVEDOR RETAIL." The Respondent Company had received applications for booking of Apartments in the Said Project by various customers and on their requests, the Respondent Company allotted the under construction apartments/ units to them.
- (ii) That, owing to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court ordered a ban on construction activities in the region from November 4, 2019, onwards, which was a blow to realty developers in the city. The Air Quality Index (AQI) at the time was running above 900, which is considered severely unsafe for the city dwellers. Following the Central Pollution Control Board (CPCB) declaring the AQI levels as not severe, the SC lifted the ban conditionally on December 9, 2019 allowing construction activities to be carried out between 6 am and 6 pm, and the complete ban was lifted by the Hon'ble Supreme Court on 14th February, 2020.
- (iii) That, when the complete ban was lifted on 14th February, 2020 by the Hon'ble Supreme Court, the Government of India imposed national lockdown on 24th of March, 2020 due to pandemic COVID-



19, and conditionally unlocked it in 3rd May, 2020, However, this has left the great impact on the procurement of material and labour. The 40-day lockdown in effect since March 24, which was further extended up to May 3 and subsequently to May 17, led to a reverse migration with workers leaving cities to return back to their villages. It is estimated that around 6 lakh workers walked to their villages, and around 10 lakh workers are stuck in relief camps. The aftermath of lockdown or post lockdown periods has left great impact and scars on the sector for resuming the fast pace construction for achieving the timely delivery as agreed under the "Allotment Letter." (That inbaly, after obtaining the requisite sanctions and approvals from the concerned authorities, the respondent company had commenced construction work and arranged for the necessary infrastructure including labour, plants and machinery, etc. However, since the construction work was hated and could not be carried on in the planned manner due to the force majeure circumstances detailed above, the said infrastructure could not be utilized and the labour was also left to idle resulting in mounting expenses, without there being any progress in the construction work. Further, most of the construction material which was purchased in advance, got wasted/deteriorated causing huge monetary losses. Even the plants and machineries, which were arranged for the timely completion of the construction work, got degenerated, resulting into losses to the respondent company running into crores of rupees.

- (iv) Moreover, it is also pertinent to mention here that every year the construction work was stopped / banned / stayed due to serious air



pollution during winter session by the Hon'ble National Green Tribunal (NGT), and after banned / stayed the material, manpower and flow of the work has been disturbed / distressed. Every year the respondent company had to manage and rearrange for the same and it almost multiplied the time of banned / stayed period to achieve the previous work flow. The orders already placed on record before this Hon'ble Bench.

- (v) The real estate sector so far has remain the worst hit by the demonetization as most of the transactions that take place happen via cash. The sudden ban on Rs 500 and Rs 1000 currency notes has resulted in a situation of limited or no cash in the market to be parked in real estate assets. This has subsequently translated into an abrupt fall in housing demand across all budget categories. Owing to its uniqueness as an economic event, demonetization brought a lot of confusion, uncertainty and, most of all, - especially when it came to the realty sector. No doubt, everyone was affected by this radical measure, and initially all possible economic activities slowed down to a large extent, which also affected the respondent company to a great extent, be it daily wage disbursement to procuring funds for daily construction, and day-to-day activities, since construction involves a lot of cash payment/transactions at site for several activities.
- (vi) It is a well-known fact that there is extreme shortage of water in state of Haryana and the construction was directly affected by the shortage of water. Further the Hon'ble Punjab and Haryana High court vide an order dated 16.07.2012 in CWP No. 20032 of 2009 directed to use only treated water from available sewerage



treatment plants (hereinafter referred to as "STP"). As the availability of STP, basic infrastructure and availability of water from STP was very limited in comparison to the requirement of water in the ongoing constructions activities in Gurgaon District, it was becoming difficult to timely schedule the construction activities. The availability of treated water to be used at construction site was thus very limited and against the total requirement of water, only 10-15% of required quantity was available at construction sites.

28. That, owing to the above said force majeure circumstances and reasons beyond the control of the respondent company, it was extremely necessary to extend the intended date of offer of possession mentioned in the allotment letter.

29. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

30. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

31. 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.

E. II Subject matter jurisdiction

33. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

34. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objection regarding force majeure conditions:

35. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as dispute with the collaborator i.e., Prime IT Solutions Pvt. Ltd., various orders of the NGT,



High Court and Supreme Court, demonetisation, govt. schemes etc. The pleas raised by the respondent with regard to a dispute with its collaborator cannot be considered and taken into consideration for delay in completing the project as the complainant was not a party to such a contract between both the parties. It was for the respondents to settle those issues with its collaborator. The plea of the respondent regarding various orders of the NGT, High Court and Supreme Court, demonetisation, govt. schemes and non-payment of instalment by different allottee of the project are all devoid of merit. First of all, the possession of the unit in question was to be offered by 04.07.2019. No doubt, the orders described above were passed when the construction was going on, however, all these orders had effect for very short duration of time and hence, cannot be said to lead to a delay of such a long duration. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. Even though the allottee may not be regular in paying the amount due but the decision was only taken after seeing that the construction of the project had not progressed further. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Entitlement of the complainant for refund:

G.I Direct the respondent to refund the entire money of the complainant paid to the respondent along with the interest at prescribed rate from the date of each payment till the date of the judgment of this authority.



36. That the complainant booked a unit in the project of the respondent named as "Elvedor" situated at sector 37C, Gurgaon, Haryana for a total sale consideration of Rs. 30,96,106/-. The complainants paid an amount of Rs. 17,30,451/-. As of now, neither OC has been obtained nor possession has been offered. The due date of possession has been calculated in accordance with clause 11(a) of the BBA. According to the aforementioned clause, **the construction of the said unit was to be completed** within a period of **sixty (60) months from the date of this agreement**. The BBA was executed between the parties on 04.07.2014 and due date possession in accordance with the BBA comes out to be 04.07.2019.
37. Thus, keeping in view the fact that the allottees- complainants wish to withdraw from the project and are demanding return of the amount received by the promoter in respect of the unit with interest on his failure to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016. The due date of possession as per agreement for sale as mentioned in the table above is 04.07.2019 and there is delay of 1 year 8 months 05 days on the date of filing of the complaint.
38. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have paid a considerable amount towards the sale consideration and as observed by *Hon'ble Supreme Court of India in*



Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021

".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

39. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (2021-2022(1)RCR(Civil),357)** reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020** decided on 12.05.2022. it was observed

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed

40. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to



give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as the allottees wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

41. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
42. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 17,30,451/- with interest at the rate of 10.00% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 (ibid).

G.II Direct the respondent to refrain from giving effect to the unfair clauses unilaterally incorporated in the Buyer Agreement.

43. The above-mentioned relief sought by the complainant was not pressed during the arguments. The authority is of the view that the complainant does not intend to pursue the above-mentioned relief sought. Hence, the authority has not raised any finding w.r.t. to the above-mentioned relief.

H. Directions of the Authority:

44. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of




obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

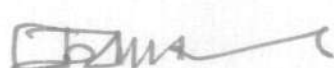
- i) The respondents are directed to refund the amount i.e., Rs. 17,30,451/- received by them from the complainant along with interest at the rate of 10.00% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.
- ii) A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
- iii) The respondents are further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.

45. Complaint stands disposed of.

46. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.09.2022