

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

<b>Complaint no.</b>	:	<b>929 of 2021</b>
<b>Date of filing complaint:</b>		<b>15.03.2021</b>
<b>First date of hearing:</b>		<b>28.05.2021</b>
<b>Date of decision</b>	:	<b>14.09.2022</b>

<b>Mausam Agarwal</b> <b>R/O:</b> A-101, Doctor Park, sector 5, Vasundhara, Ghaziabad, Uttar Pradesh- 201012	<b>Complainant</b>
Versus	
1. M/s Imperia Wishfield Pvt. Ltd. <b>Regd. office:</b> A-25, Mohan Cooperative Industrial Estate, New Delhi-110044 2. Prime IT Solutions Pvt. Ltd. <b>Regd. Office:</b> B-33, First Floor, Shivalik Colony (Near Malviya Nagar), New Delhi-110017	<b>Respondents</b>

<b>CORAM:</b>	
Dr. KK Khandelwal	<b>Chairman</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Brijesh Kumar (Advocate)	Complainant
Sh. Himanshu Singh (Advocate)	Respondent

**ORDER**

1. The present complaint has been filed by the complainants/allottees 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	11.09.2013 (Page 27 of complaint at annexure P4)
8.	Unit no.	E.137, 1 <sup>st</sup> Floor, Tower E-vita (Page 52 of complaint)
9.	Unit area admeasuring (super area)	252 sq. Ft. (Page 52 of complaint)
10.	Date of apartment buyer agreement	23.12.2013 (Page 46 of complaint)



11.	Possession clause	<p><b>11 (a) Schedule for possession of the said unit</b></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 <b>sixty (60) months from the date of this agreement</b> 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	23.12.2018 (Calculated as 60 months from date of execution of BBA i.e., 23.12.2013)
13.	Total sale consideration	Rs. 24,99,056/- (As per BBA on page 52 of complaint)
14.	Amount paid by the complainants	Rs. 20,59,341/- (As per annexure P7 on page 102 of complaint) Rs. 21,61,370/- (As per receipts annexed by complainant)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not obtained

### B. Facts of the complaint:

3. That complainant booked a commercial retail shop in the project "ELVEDOR" being developed by the Imperia Wishfield Pvt. Ltd. / respondent

at Sector 37C, Gurugram, Haryana on 29.08.2012. The said commercial retail shop is of super area of 252 sq. ft. at the basic selling rate of Rs. 7,760/- per sq. ft and handed over the advance payment of sum of Rs. 1,95,552/- vide cheque no. 239100 drawn on HDFC Bank.

4. That respondent issued welcome letter for commercial retail shop admeasuring 252 sq. ft. in the project Elevedor, Sector - 37C, Gurgaon to the complainant.
5. That complainant handed over a payment of Rs. 3,08,434/- vide cheque No. 556765 drawn on HDFC bank to the respondent on 16.11.2012 and the same was acknowledged by the respondent.
6. That respondent sent an allotment letter dated 11.09.2013 allotting a Commercial Unit No. E-137 admeasuring 252 sq. Ft. in the project at a total sale consideration of Rs. 24,99,056/-which is inclusive of external development charges / infrastructure development charges payable as on date and (preferential location charges, if applicable).
7. That the Complainant again made the following payment on various dates:-
  - (i) Cheque No. 747652 drawn on HDFC Bank dated 30.10.2013 for Rs. 2,02,804/- vide Receipt No. 1257.



- (ii) Cheque No. 000001 drawn on HDFC Bank dated 11.06.2014 for Rs. 2,11,826/- vide Receipt No. 1474.
- (iii) Cheque No. 000009 drawn on HDFC Bank dated 12.08.2014 for Rs. 1,79,567/- vide Receipt No. 1595.
- (iv) Online payment dated 13.11.2014 for Rs. 1,61,126/- vide Receipt No. 1712.
- (v) Online payment dated 02.03.2015 for Rs. 1,28,867/- vide Receipt No. 1853.
- (vi) Online payment dated 08.08.2015 for Rs. 1,01,883/- vide Receipt No. 2022.
- (vii) Online payment dated 05.01.2016 for Rs. 2,84,223/- vide Receipt No. 2204.
- (viii) Online payment dated 01.03.2016 for Rs. 2,85,059/- vide Receipt No. 2327.
- (ix) Online payment dated 01.07.2016 for Rs. 1,02,176/- vide Receipt No. 2456.

8. That respondent sent a retail buyer agreement to the complainant for signature in the month of December 2013, after more than 16 months from the date of booking. The retail buyer agreement had many one-sided clauses favouring the respondent. complainant objected to the respondent on

various clause and requested to amend the same but respondent did not make any changes in the pre-printed retail buyer agreement. Since, complainant had already paid a huge amount of Rs. 7,06,790 (almost 30% of the total sale consideration), he had no other option but to sign the retail buyer agreement. Hence, Retail Buyer Agreement was executed on 23.12.2013.

9. That clause 11 (a) of the retail buyer agreement provides that the respondent shall complete the construction of said building / said unit within a period of sixty (60) months from the date of this agreement. The timeline for delivery of possession as per clause 11 (a) of the retail buyer agreement expired on 22.12.2018.
10. That respondent has already collected Rs 21,61,370 (Twenty One Lac Sixty One Thousand Three Hundred Seventy only) from the complainant for the said commercial retail unit.
11. That it is also pertinent to mention herein that the respondent has not obtained the license in its name and collecting the money from the complainant without having a registered license for development of the said property. So, in absence of which, the respondent is not in position to deliver the project in next couple of years.



12. That the respondent did not bother to register the project with Haryana RERA Authority upon implementation of RERA Act in Haryana on 01.05.2017. As per RERA laws, this was the duty of promoter / respondent to register this on-going project with Haryana RERA Authority within 3 months, but this project has not yet been registered. Respondent has made only a half-filled application for registration of project only on 25<sup>th</sup> January 2019. This is a clear contravention of section 3 of the Real Estate Regulation and Development Act, 2016 ("RERA Act") and the respondent is liable to a penalty under section 59 of the RERA Act.
13. That the respondent in a pre-planned manner defrauded the complainant with his hard-earned huge amount and wrongfully gain himself and caused wrongful loss to the complainants.
14. In view of your aforesaid conduct, the complainants have lost his faith in Respondent's project and would like to withdraw from the project. Thus, our plea before this Hon'ble Authority is that the complainant has earned the said amount with due hard work and from his sweat and blood, thus the invested money is very much important to the complainants. If the complainants would have invested this amount of 21,61,370 (Twenty One Lac Sixty One Thousand Three Hundred Seventy only) somewhere else then the complainants could have got many benefits/increments/returns on the

invested money. Thus, humbly request to this court to kindly provide us fair justice and relief.

**C. Relief sought by the complainant:**

15. 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. 21,61,370 (Twenty One Lac Sixty One Thousand Three Hundred Seventy only) along with the interest @ 24% interest per annum from the date of each payment till the date of the judgment of this authority.
- (ii) That Respondent be directed to pay a sum of Rs. 50,000/- to the complainant towards cost of litigation.
- (iii) That the strict action be initiated against the respondent for non-registration of the project with the Authority and not obtaining proper license from Director General, Town and Country Planning.

**D. Reply by respondent:**

The respondent by way of written reply made following submissions:

16. 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').



17. That unit no. E-137, (hereinafter 'said unit) 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. 26,09,293/-, vide allotment letter/ retail buyer agreement dated 23.12.2013 (hereinafter 'Allotment Letter') on the terms and conditions mutually agreed by the allottee/complainant and the respondent company.
18. That the rights of the present parties are governed by the allotment letter/ agreement executed between the parties on 23.12.2013 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 holding a 50% equity in answering respondent company till November 2015.
19. 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.

20. 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.
21. 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.

22. 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."
23. 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.
24. 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.
25. 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 is submitted that as per records of the company, out of total consideration

amount of Rs. 26,09,293/-, the complainant has paid the principal consideration amount of 21,61,517/- and thus amount Rs. 4,47,776/- is still payable by the complainant against the said principal consideration amount. Therefore, the present complaint deserves to be dismissed on this ground alone.

26. 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".*

27. 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.

28. 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.

29. 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.



30. 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:**

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

**E. I Territorial jurisdiction**

32. 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 respondents-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 but all the pleas advanced in this regard are devoid of merit. First of all the possession of the unit in question was to be offered by 23.12.2018. Hence, events alleged by the respondent do not have any impact on the project being developed by



the respondent. Though some allottee may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of some of the allottee. 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 complainants for refund:**

**G.I Direct the respondent to refund the entire money of the complainant paid to the respondent along with the interest @ 24% interest per annum from the date of each payment till the date of the judgment of this authority.**

36. That the complainants 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. 24,99,056/-. The complainants paid an amount of Rs. 21,61,370/-. The BBA was executed between the parties on 23.12.2013 and due date possession in accordance with the BBA comes out to be 23.12.2018. 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 23.12.2013 and as such due date of possession comes out to be 23.12.2018.
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 **23.12.2018** and there is delay of 2 years 2 months 20 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. 21,61,370/- 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 respondents to pay a sum of Rs. 50,000/- as cost of litigation.**

43. The complainant in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India, in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

**G.III That strict action be initiated against the respondent for non-registration of the project with the Authority and not obtaining proper license from Director General, Town and Country Planning.**

44. 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:**

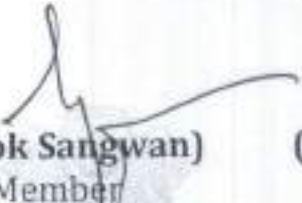
45. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

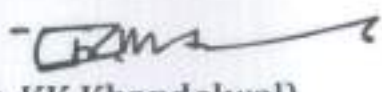
- i) The respondents are directed to refund the amount i.e., **Rs. 21,61,370/-** received by them from the complainant along with interest at the rate of 10.00% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the 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.

46. Complaint stands disposed of.

47. 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



**HARERA**  
GURUGRAM