

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

Date of decision: 14.12.2022

NAME OF THE BUILDER		M/S IREO GRACE REALTECH PVT. LTD.	
PROJECT NAME		THE CORRIDORS	
S. No.	Case No.	Case title	Appearance
1	CR/3017/2020	Om Prakash Taneja V/S M/s Imperia Wishfield Pvt. Ltd.	Shri Siddhant Sharma Shri Himanshu Singh
2	CR/3018/2020	Satish Kumar Solanki V/S M/s Imperia Wishfield Pvt. Ltd.	Shri Siddhant Sharma Shri Himanshu Singh
3	CR/3019/2020	Indu Vedwal V/S M/s Imperia Wishfield Pvt. Ltd.	Shri Siddhant Sharma Shri Himanshu Singh

CORAM:

Shri Ashok Sangwan

Member

Shri Sanjeev Kumar Arora

Member

ORDER

1. This order shall dispose of all the three complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Elvedor situated at Sector-37 C, Gurugram being developed by the same respondent/promoter i.e., M/s Imperia Wishfield Private Limited. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund the entire amount along with interest and the compensation.
 3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"Elvedor" at sector 37-C Gurgaon, Haryana.
Project area DTCP License No. Name of Licensee	2 acres 47 of 2012 dated 12.05.2012 valid upto 11.05.2016 M/s Prime IT Solutions Pvt. Ltd.
Rera Registered	Not Registered
Possession Clause: - 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 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 to abide by all or any of the terms and conditions of this agreement.	



S r. N o	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Unit admeas uring	Date of booking / date of welcome letter	Total Sale Consid eration / Total Amoun t paid by the compla inant	Due date of Possessio n	Relief Sought
1.	CR/3017/ 2020 Om Prakash Taneja V/S M/s Imperia Wishfield Pvt. Ltd. DOF: 06.10.2020	18.06.2021	102, 1st Floor, Tower IBIS	261 sq. ft.	06.10.20 12 (as per receipt of payment on page no. 9 of complain t) 19.11.20 12 (as per page no. 08 of complain t)	TSC: - Rs. 21,07,5 75/- AP: - Rs. 7,62,44 0/-	06.10.201 7 (calculated from the date of booking as no BBA was executed)	Refund the entire amount along with interest
2.	CR/3018/ 2020 Satish Kumar Solanki V/S M/s Imperia Wishfield Pvt. Ltd. DOF: 06.10.2020	Not filed	104, 1 st Floor, Tower IBIS	252 sq. ft.	26.09.20 12 (as per receipt of payment on page no. 9 of complain t) 19.11.20 12 (as per page no. 08 of complain t)	TSC: - Rs. 20,34,9 00/- AP: - Rs. 7,35,89 7/-	26.09.201 7 (calculated from the date of booking as no BBA was executed)	Refund the entire amount along with interest
3.	CR/3019/ 2020	18.06.2021	116, 1st	221 sq. ft.	28.09.20 12	TSC: - Rs.	28.09.201 7	Refund the entire



Indu Vedwal V/S M/s Imperia Wishfield Pvt. Ltd. DOF: 06.10.2020		Floor, Tower IBIS	(as per receipt of payment on page no. 9 of complain t) 19.11.20 12 (as per page no. 08 of complain t)	17,84,5 75/- AP: - Rs. 6,46,15 1/-	(calculated from the date of booking as no BBA was executed)	amount along with interest
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Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:
Abbreviation Full form
TSC Total Sale consideration
AP Amount paid by the allottee(s)

- The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due date, seeking award of refund the entire amount along with interest and compensation.
- It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
- The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/3017/2020 Om Prakash Taneja V/S M/s Imperia Wishfield Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua refund the entire amount along with interest.

A. Project and unit related details

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/3017/2020 Om Prakash Taneja V/S M/s Imperia Wishfield Pvt. Ltd

S. N.	Particulars	Details
1.	Name and location of the project	"Elvedor" at sector 37C, Gurgaon, Haryana
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	M/s Prime IT Solutions Pvt. Ltd.
6.	RERA Registered/ not registered	Not Registered
7.	Apartment no.	102, 1 st Floor, Tower IBIS (as alleged by both parties, no documents were placed on record)
8.	Unit area admeasuring	261 sq. ft. (as alleged by both parties, no documents were placed on record)
9.	Booking date	06.10.2012 (as per receipt of payment on page no. 9 of complaint)

10.	Welcome letter	19.11.2012 (annexure 1 on page no. 08 of complaint)
11.	Date of builder buyer agreement	Not Executed
12.	Due date of possession	06.10.2017 (Calculated on the basis of the date of booking application i.e., 06.10.2012 in the absence of buyer's agreement)
13.	Withdrawal letter by complainant	13.07.2020
14.	Possession clause [Possession clause taken from the BBA annexed in complaint no. 4038 of 2021 of the same project being developed by the same promoter]	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 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 to abide by all or any of the terms and conditions of this agreement.
15.	Total sale consideration	Rs. 21,07,575/- [as alleged by complainant]
16.	Amount paid by the complainant	Rs. 7,62,440/- [as per receipts annexed with the complaint]
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint:
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9. That the complainant booked a commercial unit on 06.10.2012 having unit no. -102 admeasuring about 261 sq ft at Sector 37 C, Gurgaon, Haryana in Elvedor, for a basic sale price of 8075/- sq ft. and total sale consideration of Rs. 21,07,575/-. The welcome letter was issued on 19.11.2012.
10. That the complainant purchased the upcoming commercial unit under construction linked plan and which was to be paid from time to time till the possession of the unit.
11. That the respondent has breached by delaying the project as the booking was done on 06.10.2012, and no builder buyer agreement was executed. The complainant was informed at the time of booking that the project



- will be handed over within 60 months by the respondent but till date no construction has been done.
12. That the complainant till date has made a payment of Rs. Rs. 7,62,440/- on various dates.
 13. That the complainant contacted the respondent for refund several times and made several calls and even visited the office and met the respondent employees but no positive response was given by them, later the respondent stopped picking up call of complainant.
 14. That after waiting for a response from respondent, finally the complainant wrote a mail on 13.07.2020 for refund and the complainant was surprised to receive a reply dated 15.07.2020 wherein the respondent offered to have a meeting for which the complainant agreed, but the complainant did not get convinced by the respondent mail to have a meeting in office , so he went to see the actual status of the construction site and was shocked to see the barren land and weeds all around and therefore decided to file in authority for refund.
 15. That after no response the complainant on 21.07.2020 went to the site to see the status of construction but was in a shock to see that the construction has not yet started since last 8 years and could see only barren land all around.
 16. That the intention of the respondent and their officers and directors was malafide right from the beginning and has been aimed to cheat the complainant.
 17. That the respondent has committed breach of trust and have cheated the complainant. The complainant would not have made the payments of the said amount but for the reorientations and promises made by

respondent and their directors and officers the complainant kept paying the instalments as and when demanded.

18. That the respondent has mis-appropriated the said amount paid by the complainant and therefore, are liable to be prosecuted under the provisions of law.

19. That, accordingly, the complainant is left with no other option except to file the present complaint. The complainant is seeking refund of his money along with interest and compensation by way of this complaint.

C. Relief sought by the complainant: -

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

I. Direct the respondent to refund an amount of Rs. 7,62,440/- paid by the complainant along with interest.

21. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

The respondent has contested the complaint on the following grounds.

22. That the present complaint has been filed by the complainant against the respondent in respect of the tower IBIS being developed by the respondent in its group housing project titled as "Elvedor Retail", situated at sector-37C Gurgaon, Haryana.

23. That the flat no. 102, in tower- IBIS situated in the said project, was allotted to the complainant by the respondent vide allotment letter



dated 06.10.2012 on the terms and condition mutually agreed by the parties.

24. 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".

25. In view of the above said, the respondent company had intended to complete the construction of the flat 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.

26. The respondent company endeavor to complete the construction and development works in first quarter of 2022 (with grace period of three months). Thus, by June 2022, the respondent will be in position to handover the allotted unit.
27. 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 vests on the joint venture agreement executed between M/s Prime IT Solutions Pvt. Ltd. and Imperia Structure Pvt. Ltd. lying down the transaction structure for the 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 was legally liable 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.

28. 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 were approved on 25.06.2013. It is 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 were under the same management and directors.
29. Further, it is also relevant to mention here that in terms of compromise dated 12.01.2016 a decree sheet was 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, agreed to take collective decision for the implementation of the project and all expenses related to the project would be jointly incurred by both the parties from the dedicated project account which would be in the name of "M/s Imperia Wishfield Limited Elvedor Account."
30. That it I also agreed between both M/s Imperia Wishfield Pvt. Ltd. and Prime IT Solutions Pvt. Ltd, that regardless of execution of

collaboration agreement dated 06.12.2012, M/s Prime IT Solutions Pvt. Ltd. shall remain actively involved in the implementation of project.

31. 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:

- 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.

- 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.
- 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-paced 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.

- 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 workflow. The orders already placed on record before this Hon'ble Bench.



- The real estate sector so far has remained 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.
- 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.

- 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.

32. Copies of all the relevant documents have been filed and placed on the 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

33. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

34. 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

35. 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) The promoter shall-

(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.

36. 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 complainant at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objection regarding non joinder of M/s Prime IT Solutions Pvt. Ltd. as a party.

37. While filing written reply on 18.06.2021, a specific plea was taken by the respondent with regard to non-joining of M/s Prime IT Solutions Pvt. Ltd. as a party in the complaint. It is pleaded by the respondent that there was joint venture agreement executed between it and M/s Prime IT Solutions Pvt. Ltd., leading to collaboration agreement dated

06.12.2012 between them. On the basis of that agreement, the respondent undertook to proceed with the construction and development of the project at its own cost. Moreover, even on the date of collaboration agreement the directors of both the companies were common. A reference to that agreement was also given in the letter of allotment as well as buyers agreement. So, in view of these facts, the presence of M/s Prime IT Solutions Pvt. Ltd. as a respondent before the authority is must and be added as such. But the pleas advanced in this regard are devoid of merit. No doubt there is mention to that collaboration agreement in the buyer's agreement but the complainant allottee was not a party to that document executed on 06.12.2012. If the Prime IT Solutions would have been a necessary party, then it would have been a signatory to the buyer's agreement. The factum of merely mentioning with regard to collaboration agreement in the buyer's agreement does not ipso facto shows that M/S Prime IT Solutions Pvt. Ltd. should have been added as a respondent. Moreover, the payments against the allotted units were received by the respondent/builder. So, taking into consideration all these facts it cannot be said that joining of M/s Prime IT Solutions Pvt. Ltd. as a respondent was must and the authority can proceed in its absence in view of the provision contained in Order 1 Rules 4 (b) and 9 of Code of Civil Procedure, 1908.

F.II Objection regarding force majeure conditions:

38. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as national lockdown, shortage of labour due to covid 19 pandemic,



stoppage of construction due to various orders and directions passed by hon'ble NGT, New Delhi, Environment Pollution (Control and Prevention) Authority, National Capital Region, Delhi, Haryana State Pollution Control Board, Panchkula and various other authorities from time to time. But all the pleas advanced in this regard are devoid of merit. As per the possession clause 11 of the builder buyer agreement, the possession of the said unit was to be delivered within a period of 60 months from the date of the agreement. The builder buyer agreement between the parties was not executed between parties. So, the due date for completion of the project and offer of possession of the allotted unit is calculated from the date of booking which comes out to be 06.10.2017. The authority is of the view that the events taking place after the due date do not have any impact on the project being developed by the respondent/promoter. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, it cannot be given any leniency based on aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

G. Findings on the relief sought by the complainant

G.I Direct the respondent to refund an amount of Rs. 7,62,440/- paid by the complainant along with interest.

39. The complainant booked a retail shop in the project of the respondent detail above for a total sale consideration of Rs. 21,07,575/- on 06.10.2012 out of which the complainant has made a payment of Rs. 7,62,440/- upto 18.01.2016. The respondent after accepting of such

amount neither issued any allotment letter nor executed buyers' agreement till date regarding the unit.

40. On consideration of record and submission the authority is of the view that no builder buyer agreement has been executed between the parties till date. So, the possession clause for calculating the due date is taken from the compliant no. 4038 of 2021 of the same project being developed by the same promoter. Hence, due date is calculated on the basis of the date of booking application i.e., 06.10.2012 in the absence of buyer's agreement which comes out to be 06.10.2017.
41. Keeping in view the fact that the allottee complainant wishes to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter 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.
42. The due date of possession as per agreement for sale as mentioned in the table above is 06.10.2017 and there is delay of 3 years on the date of filing of the complaint.
43. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-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 he has 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....."

44. 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 (c), 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.

45. 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 allottee, as the allottee wishes 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.

46. 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.
47. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 7,62,440/- with interest at the rate of 10.35% (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.

H. Directions of the authority

48. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
 - i. The respondent/promoter is directed to refund the amount i.e., Rs 7,62,440/-, Rs. 7,35,897/-, Rs. 6,46,151/- respectively received by him i.e., respondent/promoter with interest at the rate of 10.35% 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 respondent to comply with the directions given in this order and failing which legal consequences would follow.

49. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

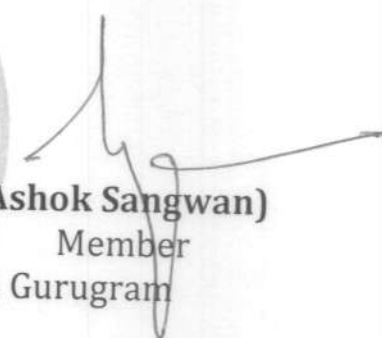
50. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.

51. Files be consigned to registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Ashok Sangwan)

Member

Dated: 14.12.2022

HARERA
GURUGRAM