



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

Complaint no.	:	4942 of 2020
Date of first hearing:		26.02.2021
Date of decision	:	14.12.2022

1. Kishore Kumar Bhimwal 2. Jaswant Singh R/O: H.no. 625, Sector-47, Gurugram, Haryana-122001	<b>Complainants</b>
Versus	
M/s Imperia Wishfield Pvt. Ltd. <b>Regd. office:</b> A-25, Mohan Cooperative Industrial Estate, New Delhi-110044	<b>Respondent</b>

<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Siddhant Sharma (Advocate)	Complainants
Sh. Himanshu Singh (Advocate)	Respondent

**ORDER**

- The present complaint has been filed by the complainant/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.	Unit no.	E-205, 1 <sup>st</sup> Floor, Tower Evita (Page no. 24 of complaint)
8.	Unit area admeasuring (super area)	197 sq. Ft. (Page no. 24 of complaint)
9.	Date of apartment buyer agreement	12.02.2014 (Page no. 18 of complaint)





10.	Possession clause	<p><b>11 (a) Schedule for possession of the said unit</b></p> <p><i>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.</i></p>
11.	Due date of possession	<p>12.02,2019</p> <p>(Calculated as per BBA)</p>
12.	Total sale consideration	<p>Rs. 20,68,234/-</p> <p>(As per statement of account on page no. 76 of complaint)</p>
13.	Amount paid by the complainants	<p>Rs. 16,36,197/-</p> <p>(As per statement of account on page no. 76 of complaint)</p>
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not obtained

**B. Facts of the complaint:**



3. That the complainants booked a commercial unit on 13.09.2012 having unit no. -205 admeasuring about 197 sq ft at Sector 37 C, Gurgaon, Haryana in Elvedor, for a basic sale price of 7760/- sq ft. and total sale consideration of Rs. 20,68,234/-.
4. That they 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. Thereafter, a flat builder buyers' agreement 12.02.2014 was executed between the parties.
5. That as per clause 11(a) of the agreement the builder agreed to complete the project in 60 months from the date of execution of builder buyer agreement.
6. That the respondent has breached by delaying the project as the booking was done on 13.09.2012, and the builder buyer agreement was executed on 12.02.2014. The project will be handed over within 60 months by the respondent but till date no construction has been done.
7. That the complainants till date have made a payment of Rs. 17,07,480/- on various dates.
8. That the complainants contacted the respondent for refund several times and made several calls and sent several mails continuously but the respondent or its employees did not reply to any call or mails.
9. That after no response the complainants on 08.09.2020 went to the site to see the status of construction but was in a shock to see that only the structure is standing on the site and no work was going on.
10. That the intention of the respondent and their officers and directors was malafide right from the beginning and has been aimed to cheat the complainants.





11. That the respondent has committed breach of trust and have cheated the complainants. They 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 complainants kept paying the instalments as and when demanded.
12. That the respondent has mis-appropriated the said amount paid by them and therefore, are liable to be prosecuted under the provisions of law.
13. That, accordingly, the complainants are left with no other option except to file the present complaint. The complainants are seeking refund of his money along with interest and compensation by way of this complaint.

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

14. The complainants have sought following relief(s):
  - (i) Direct the respondent to refund an amount of Rs. 17,07,480/- paid by complainants along with interest @ 24% per annum.
  - (ii) Direct the respondent to pay compensation of Rs. 10 Lacs for mental agony, harassment and loss of opportunity as per the Act.

**D. Reply by respondent:**

The respondent by way of written reply made following submissions:

15. That unit no. E-205, in tower- Evita situated in the said commercial project, which had been allotted to the complainants by the respondent company for a total consideration amount of Rs. 21,65,834/-, vide allotment letter/ retail buyer agreement dated 13.02.2014 on the terms and conditions mutually agreed by the parties.



16. 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.
17. That a clear reference of the said collaboration agreement has been given in the said allotment letter/ retail buyer agreement executed between the complainants 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.

18. 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.
19. 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."

20. 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 the project have been taken away by said JV partner.
21. 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.
22. It was submitted that in clause 11.(a), it is mentioned and duly agreed by the complainants 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".*





23. 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. The possession of the unit would be tentatively delivered to its respective allottee(s) in second quarter of 2022 with respective OC on the said project.
24. 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 complainants 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 complainants 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 complainants 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-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.

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

- (v) 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.
- (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.

25. 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.
26. 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:**

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

**E.1 Territorial jurisdiction**

28. 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**

29. 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.*

30. 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 non joinder of M/s Prime IT Solutions Pvt. Ltd. as a party.**

31. While filing written reply on 31.01.2022, 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 IT Solutions would have been a necessary party, then it would have been a signatory to the buyer's agreement executed between the parties on 12.02.2014 i.e., after signing of collaboration 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:**

32. 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





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 12.02.2019. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. 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, 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:**

- (i) **Direct the respondent to refund an amount of Rs. 17,07,480/- paid by complainants along with interest @ 24% per annum.**
33. 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. 20,68,234/-. They paid an amount of Rs. 16,36,197/-. A buyer's agreement was executed between the parties on 12.02.2014 and due date possession in accordance with the terms comes out to be 12.02.2019. 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 agreement. 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.





34. Thus, keeping in view the fact that the allottee- complainants 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 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 **12.02.2019** and there is delay of 1 years 10 months 12 days on the date of filing of the complaint.
35. 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 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....."*

36. 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.*

37. 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 he 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.
38. This is without prejudice to any other remedy available to the allottee including compensation for which he 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.
39. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 16,36,197/- 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*.

**(ii) Direct the respondent to pay compensation of Rs. 10 Lacs for mental agony, harassment and loss of opportunity as per the Act.**

40. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (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. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

**H. Directions of the Authority:**

41. 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 respondent is directed to refund the amount i.e., **Rs. 16,36,197/-** received by it from the complainants along with interest at the rate of 10.35% 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) The respondent is 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-complainants.


iii) 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.

42. Complaint stands disposed of.

43. File be consigned to the registry.

  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

  
(Ashok Sangwan)  
Member

Dated: 14.12.2022

**HARERA**  
**GURUGRAM**