

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

Complaint no. : 371 of 2020
First date of hearing: 24.02.2020
Date of decision : 21.10.2022

Rajbir Singh Yadav
R/o: Flat no. 1502, Tower AL,
Antriksh Heights, Sector-84,
Gurgaon, Haryana-122018

Complainant

Versus

M/s Imperia Wishfield Pvt. Ltd.
Regd. Office at: - A-25, Mohan Cooperative
Industrial Estate, Mathura Road, New Delhi,
110044

Respondent

CORAM:
Shri Ashok Sangwan
Shri Sanjeev Arora

**Member
Member**

APPEARANCE:

Shri Sushil Yadav
Shri Himanshu Singh

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 23.01.2020 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of

section 19(4) 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 allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. No.	Heads	Information
1.	Name and location of the project	"Elvedor" at sector 37C, Gurgaon, Haryana
2.	Nature of the project	Commercial Project
3.	Project area	02 acres
4.	DTCP license no.	47 of 2012 dated 12.05.2012 valid upto 11.05.2016
5.	Name of license holder	M/s Prime IT Solutions Pvt. Ltd.
6.	RERA Registered/ not registered	Not Registered
7.	Unit no.	E.025 (as per allotment letter annexed in complaint)
8.	Unit measuring	315 sq. ft. (as per allotment letter annexed in complaint)
9.	Date of booking	14.09.2012 (as per receipt of payment)



10.	Date of welcome letter	22.09.2013
11.	Date of Allotment	23.08.2013
12.	Date of builder buyer agreement	Not Executed
13.	Due date of possession	14.09.2017 (Calculated on the basis of the date of booking application i.e., 14.09.2012 in the absence of buyer's agreement)
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 consideration	Rs. 33,49,509/- [as per allotment letter]



16.	Total amount paid by the complainant	Rs. 7,08,731/- [as per receipts annexed with the complaint]
17.	Occupation certificate	Not received
18.	Offer of possession	Not offered

B. Facts of the complaint

3. That the complainant booked a commercial retail unit in the project floated by the respondent namely "Elvedor" situated at Sector-37C, Gurgaon, Haryana.
4. That the complainant was allotted a unit no. E.025 on ground floor admeasuring 315 sq. ft. in the project and paid an amount of Rs. 7,08,731/- for the sale consideration of unit. That after receiving the above payment the respondent did not sent the copy of builder buyer agreement.
5. That the complainant has several times requested the respondent that they were not capable of conceiving the project and completing the project and as they have failed to deliver the project for the last 6 years and have been retaining the huge amount of the complainant illegally and unlawfully without there being any justified cause.
6. That the respondent has been retaining the entire amount without fulfilling their commitments even despite several oral and exchange of emails.
7. That the complainant requested the respondent several times to refund the said amount of the said commercial retail unit, but the



interactions and altercations advanced from the side of the respondent clearly portrays that the respondent has turned mala fide and having no intentions to make payments.

8. That the respondent has not obtained the license in their name and collecting the money from the complainant without having a registered license for development of the said property nor the respondent has shown any documents regarding any other license or other NOC or permission from the concerned department to the complainant. So, in absence of which, the respondent is not in position to deliver the project in next years.
9. That due to this omission on the part of the respondent the complainant has been suffering from disruption, mental torture, agony and also continues to incur severe financial losses. This could be avoided if the respondent had given possession of the commercial retail unit on time.
10. That the complainant has requested the respondent several times on making telephonic calls and also personally visiting the office of the respondent either to deliver possession of the unit in question or to refund the amount along with interest @ 24% per annum on the amount deposited by the complainant, but respondent has flatly refused to do so. Thus, 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 complainant.

C. Relief sought by the complainant:

11. The complainant has sought the following relief:



- Direct the respondent to refund an amount of Rs. 7,08,731/- paid by the complainant along with interest.
- Direct the respondent to pay a sum of Rs. 55,000/- for cost of litigation.
- Direct the respondent to pay a cost of Rs. 5,00,000/- for the harassment and mental agony suffered by complainant.

D. Reply by the respondent.

12. That the present complaint has been filed by the complainant against the respondent no.1 with respect to the tower- "Evita" being developed by it in its commercial project titled as "Elvedor Retail" situated at sector-37C, Gurgaon, Haryana.
13. That unit no. E.025 in tower- Evita situated in the said commercial project, which was allotted to the complainant by the respondent for a total consideration amount of Rs. 36,03,004/- vide allotment letter dated 23.08.2013.
14. 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 out of total consideration amount of Rs. 36,03,004/-, the complainant has paid the principal consideration amount of 7,08,731/- and thus amount Rs. 28,94,273/- is still payable by the complainant against the said principal consideration amount.



15. That the rights of the present parties are governed by the allotment letter/agreement executed between the parties on 23.08.2013. That the project in question i.e. Elvedor is a joint venture project with "Prime IT Solutions Pvt. Ltd." and this Prime IT was also a licensee company and holding a 50% equity till November 2015.
16. That 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.
17. That 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 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. The building plans of the said project being developed under above mentioned license no. 47 of 2012 was approved on 25.06.2013. That even before the execution date of above referred collaboration agreement between M/s Prime IT Solutions Pvt. Ltd. and Imperia Wishfiels Pvt. Ltd. the both these companies had under the same management and directors.

18. 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."
19. That the said project suffered a setback on account of non-cooperation by aforesaid JV Partner i.e. 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 namely Prime IT Solutions Private Limited.
20. That it is also agreed between both M/s Imperia Wishfield Pvt. Ltd. and M/s 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. The respondent no.1 has filed an execution petition against the said M/s Prime IT Solutions for compliance of their part and responsibility in regard to said project Elvedor, which is pending adjudication before the civil court at Gurugram and last listed for hearing on 13.01.2022 and same is still sub-judice. That, in the said execution, the answering respondent no.1 has prayed for recovery of Rs. 24.27 crores towards balance construction cost of the project.

21. That in view of above background and the factual position, the present complaint against the respondent is not maintainable on account of non-joinder of necessary party, in absence of which adjudication of present matter will be against the settled principles of law as well as principles of natural justice.
22. 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.
23. That 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 it is important to mention here that the said project comprises of retail shops and, studio apartments. 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.

24. That, in view of the above stated, the respondent company requested for grant of 12 months' time to complete the said project enabling us to initiate possession related activities within this extended period of one year. In the meanwhile, the respondent requests you to not pass any coercive monetary orders in this period, so that respondent will devote percent of its resources in this project. It is not out of place to mention here that respondent company is arranging funds with many difficulties, majority of customers have also stopped making any payments, so all funds infusion in the project being done at our end only and through JV partner i.e. Prime IT.
25. 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 had



contemplated at the very initial stage while signing the allotment letter 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 that the respondent is entitled to extension of time for delivery of the said Unit on account of force majeure circumstances beyond the control of the respondent.

- That, the respondent 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 and named the project as "Elvedor Retail." The respondent had received applications for booking of apartments in the said project by various customers and on their requests, the respondent 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 initially, 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



halted 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 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 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.

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 authority

27. 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

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 19(4) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 19(4) is reproduced as hereunder:

Section 19(4)

The allottee shall be entitled to claim the refund of the amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account

of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

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 complainant at a later stage.

F. Findings on the objections raised by the contesting respondent:

F.1 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 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 show 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 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 14.09.2017. 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.

F. Findings on the relief sought by the complainant.

- **Direct the respondent to refund an amount of Rs. 7,08,731/- paid by the complainant along with interest.**

33. The counsel for the respondent states that the promoter comprises of two parties namely, M/s Prime IT Solutions Pvt. Ltd. and Imperia Wishfield Pvt. Ltd. He states that both the parties are jointly and severally liable for any relief that may be granted in this regard.
34. The complainant booked a retail shop in the project of the respondent detail above for a total sale consideration of Rs. 33,49,509/- on 14.09.2012 out of which the complainant has made



a payment of Rs. 7,08,731/- upto 19.11.2012. The unit was allotted in favor of the complainant on 23.08.2013.

35. 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., 14.09.2012 in the absence of buyer's agreement which comes out to be 14.09.2017.
36. Keeping in view the fact that the allottee complainant wishes to withdraw from the project and 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.
37. The due date of possession as per agreement for sale as mentioned in the table above is 14.09.2017 and there is delay of 2 years 4 months 9 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 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.....”*

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. (supra)** 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 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.

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. 7,08,731/- with interest at the rate of 10.25% (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*.
 - **Direct the respondent to pay a sum of Rs. 55,000/- for cost of litigation.**



- **Direct the respondent to pay a cost of Rs. 5,00,000/- for the harassment and mental agony suffered by complainant.**

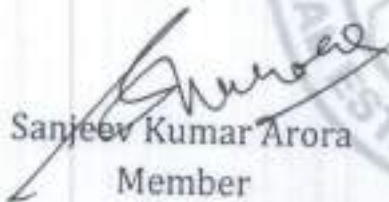
43. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Decided on 11.11.2021)**, has held that an allottee is entitled to 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 complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

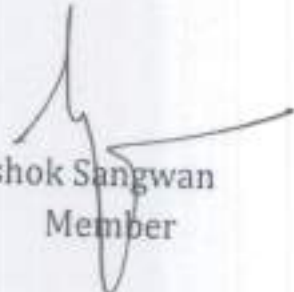
F. Directions of the authority

44. 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. 7,08,731/-received by him to the complainant with interest at the rate of 10.25% 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 complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.
- iii. 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.
45. Complaint stands disposed of.
46. File be consigned to registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member

HARERA
Haryana Real Estate Regulatory Authority, Gurugram
GURUGRAM
Dated: 21.10.2022