



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

Complaint no. :	2961 of 2021
Date of filing complaint:	30.07.2021
Date of decision :	14.09.2022

Vikas Jain R/O: Ho. No. C-10, Ashoka Enclave, Part II, 2 nd Floor, Sector -37, Faridabad - 121003	Complainant
Versus	
M/s Imperia Wishfield Pvt. Ltd. Regd. office: A-25, Mohan Cooperative Industrial Estate, New Delhi-110044	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Shri Ajay Kumar Singh (Advocate)	Complainant
Sh. Himanshu Singh (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules



and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Elvedor", Sector 37 C, Gurugram
2.	Nature of the project	Commercial Project
3.	Project area	2 acres
4.	DTCP license no.	47 of 2012 dated 12.05.2012 valid upto 11.05.2016
5.	Name of licensee	Prime IT Solutions
6.	RERA Registered/ not registered	Not registered
7.	Date of Allotment Letter	11.09.2013 (Page 13 of complaint at annexure C-1)
8.	Unit no.	E.136, 1 st Floor, Tower E-vita (Page 27 of complaint)
9.	Unit area admeasuring (super area)	261 sq. Ft. (Page 27 of complaint)

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10.	Date of apartment buyer agreement	07.10.2014 (Page 17 of complaint at annexure C-2)
11.	Possession clause	11 (a) Schedule for possession of the said unit <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 sixty (60) months from the date of this agreement unless there shall be delay or failure due to department delay or due to any circumstances beyond the power and control of company or force majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the allottee(s) to pay in time the total price and other charges and dues/payments mentioned in this Agreement or any failure on the part of the Allottee(s) to abide by all or any of the terms and conditions of this Agreement.</i>
12.	Due date of possession	07.10.2019 (Calculated as per BBA)
13.	Total sale consideration	Rs. 27,59,356/- (As per BBA on page 27 of complaint)
14.	Amount paid by the complainant	Rs. 16,98,411/- (As alleged by complainant on page 9 of complaint)
15.	Occupation certificate	Not obtained

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16.	Offer of possession	Not obtained
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B. Facts of the complaint:

3. That in 2011 the respondent approached to the complainant for booking of a unit in the group housing project launched by named as "Elvedor" situated on Sector-37C, Gurgaon, he visited the project site and after repeated request and offer made by the respondent, the complainant became agree to book a unit in the said project.
4. That the complainant paid booking amount Rs. 2,14,194/- vide cheque dated 29.09.2012 and submitted the booking form to the respondent and the respondent after submitting the booking form and payment of booking amount provisionally allotted a unit, in the said project "Elvedor" situated on Sector-37C, Gurgaon and issued valid payment receipt for the said payment.
5. That after the above said booking and payment the respondent asked for the further payment as per the payment plan and the complainant with bonafide belief make the further payment of Rs. 3,21,291/- vide cheque dated 15.11.2012 to the respondent and the respondent issued valid payment receipt fir the said payment to the complainant.
6. That the complainant after making the payment of booking amount and further instalment looking for the allotment of unit but the respondent allotted a unit no. E-136 admeasuring 261 sq.ft. super area in the commercial project "Elvedor" situated in Sec-37C, Gurugram, after one year by the allotment letter dated 11.09.2013 in which total cost of the unit with other charges was mentioned Rs. 27,59,356/-.



7. That after more than 2 years of the booking the respondent executed 'retail buyer agreement' on 07.10.2014 in favour of the complainant and through this agreement the respondent allotted unit no. E-136, 1st Floor, Tower-Evita, admeasuring 261 sq.ft. in the said project "Elvedor" situated in sector-37C, and total cost of the unit is Rs. 27,59,356/- excluding taxes, accordingly, a binding contract came into existence in the form of the said agreement duly signed by both the parties.
8. That after the execution of the agreement the respondent made further demand as per the payment plan and the complainant paid all demand time to time to the respondent from Sep 2012 to till Aug 2016 the complainant paid total amount of Rs. 16,98,411/- to the respondent for the said unit. That the complainant booked the said unit in 2012 with the hope that they he would get the possession of the said unit within 60 months from the date of booking but the respondent fail to provide the possession of the said unit within 60 months and only took payment on the wrong commitment and the complainant with bonafide belief make all the payment time to time with the hope that they will deliver the unit within 60 months but the respondent fail to do it and even that the agreement was also executed after expiry of 2 years.
9. That in the agreement the time of possession was also mentioned as 60 months from the date of this agreement which was also expired on 7.10.2019, but the respondent fail to complete the said project in committed time in the agreement and they have never ever updated about the said project to the complainant and only took payment at the milestone of construction.
10. That the respondent was in the liability to handed over the said project within 60 months as committed in the agreement, but the respondent fail



to deliver it in the time bound manner, which is a clear case of unfair trade practice and deficient in service on the part of the respondent and the respondent have to punish for the said act. That with a great hope and hearing about the healthy reputation of the respondent, the complainant decided to purchase the above-mentioned unit from the respondent but he has been let down by the unprofessional and unsympathetic approach of the respondent. The complainant has put a lot of faith in the services of the respondent and paid his hard-earned money to the respondent, but they have breached the complainant's faith.

11. That the complainant after making payment of more than 60% of the total cost of unit looking for the possession of his unit since last 8 years but the respondent not able to provide the possession of his unit therefore he has decided to cancel his unit and take refund of his paid amount with interest and sent emails to the respondent for the refund of his paid amount vide email dated 14/11/2020, 30/12/2020 but no response received from the respondent and they have finally send an email dated 21/05/2020 and stated that they will complete the project by end of 2021 but from the current status it is not looking to be complete by the end of 2021.
12. That the complainant recently visited to the project site for knowing the status of project and from the current status it is not looking to be complete by end of 2021, hence the complainant left with no choice submitted a request letter for refund to the respondent on 12/07/2021 which was duly received by the respondent. That due to the deficient and unprivileged services of the respondent, the complainant has suffered extreme loss of time, money and reputation. The delay in



possession by the respondent has caused immense harassment and mental agony besides huge financial loss to the complainant.

13. That the complainant made a total payment of Rs. 16,98,411/- to the respondent from 2012 to 2016 as per demand made by the respondent and the respondent is require refunding the said amount to the complainant with interest.
14. That the complainant has made various request and reminders to the respondent to refund the paid amount and cancel the booking, but the respondent fails to do it and the complainant is facing harassment and trouble from the respondent. That in view of the said fact and circumstances the complainant is looking for the refund of his paid amount with interest from the respondent.

C. Relief sought by the complainant:

15. The complainant has sought following relief(s):
 - i. Direct the respondent to refund the entire amount along with prescribed rate of interest.
 - ii. To direct the respondent to pay litigation cost of Rs. 60,000/-

D. Reply by respondent:

16. The respondent by way of written reply made following submissions:
17. That the present complaint has been filed by the complainant against the respondent company in respect of the tower- "Evita" being developed by the respondent company in its commercial project titled as "Elvedor Retail" situated at sector-37C, Gurgaon, Haryana.



18. That unit no. E-136, in tower- Evita situated in the said commercial project, which had been allotted to the complainant by the respondent company for a total consideration amount of Rs. 29,11,683/-, vide allotment letter/ retail buyer agreement dated 07.10.2014 on the terms and conditions mutually agreed by the allottee/complainant and the respondent company.
19. The said project is a commercial project being developed on two acres of land situated at Sector 37-C, Gurugram, Haryana and comprises of retail and studio apartments. The foundation of the said project vest upon the joint venture agreement executed between M/s Prime IT Solutions Pvt. Ltd. and Imperia Structure Pvt. Ltd. lying down the transaction structure for this Project and for creation of SPV company, named and styled as "Imperia Wishfield Pvt. Ltd.". Later, collaboration agreement dated 06.12.2012 as executed between M/s Prime IT Solutions Private Limited (on one part) and M/s Imperia Wishfield Pvt. Ltd. (on the second part). In terms of the said collaboration agreement, the second party i.e., Imperia Wishfield Pvt. Ltd is legally entitled to undertake construction and development of the project at its own costs, expenses and resources in the manner it deems fit and proper without any obstruction and interference from any other party. The referred collaboration agreement has been signed by representative of M/s Prime IT Solutions Private Limited and Imperia Wishfield Pvt. Ltd. Suffice to mention here that on the relevant date i.e., 06.12.2012 on



which the collaboration agreement was signed there are common directors in both these companies i.e., in M/s Prime IT Solutions Private Limited and M/s Imperia Wishfield Pvt. Ltd.

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



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

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

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respondent's rights and same is also in contrary to admitted understanding between the parties as contained in the decree dated 21.01.2016.

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

"11. (a) SCHEDULE FOR POSSESSION OF THE SAID UNIT:

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

26. In view of the above said, the respondent company had intended to complete the construction of the allotted unit on time. It is pertinent to mention that the respondent company had successfully completed the civil work of the said tower/project, and the finishing work, MEP work is remaining of these towers, which is going on and the respondent company is willing to complete the same within next six to twelve months of period, however the delay in handing over the project has occurred due to certain force majeure circumstance, inter alia includes the covid-19.. That the possession of the unit will be tentatively



delivered to its respective allottee(s) in second quarter of 2022 with respective OC on the said project.

27. That, it is relevant to mention herein that several allottees have withheld the remaining payments, which is further severally affecting the financial health of the respondent company and further due to the force majeure conditions and circumstances/reasons, which were beyond the control of the respondent company as mentioned herein below, the construction works got delayed at the said project. Both the parties i.e. the complainant as well as the respondent company had contemplated at the very initial stage while signing the allotment letter/agreement that some delay might have occurred in future and that is why under the force majeure clause as mentioned in the allotment letter, it is duly agreed by the complainant that the respondent company shall not be liable to perform any or all of its obligations during the subsistence of any force majeure circumstances and the time period required for performance of its obligations shall inevitably stand extended. It is unequivocally agreed between the complainant and the respondent company that the respondent company is entitled to extension of time for delivery of the said unit on account of force majeure circumstances beyond the control of the respondent company. And inter-alia, some of them are mentioned herein below:



- (i) That, the respondent company started construction over the said project land after obtaining all necessary sanctions/approvals/clearances from different state/central agencies/authorities and after getting building plan approved from the authority (all in the name of prime IT) and named the project as "ELVEDOR RETAIL." The respondent company had received applications for booking of apartments in the said project by various customers and on their requests, the respondent company allotted the under-construction apartments/ units to them.
- (ii) That, owing to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court ordered a ban on construction activities in the region from November 4, 2019, onwards, which was a blow to realty developers in the city. The Air Quality Index (AQI) at the time was running above 900, which is considered severely unsafe for the city dwellers. Following the Central Pollution Control Board (CPCB) declaring the AQI levels as not severe, the SC lifted the ban conditionally on December 9, 2019, allowing construction activities to be carried out between 6 am and 6 pm, and the complete ban was lifted by the Hon'ble Supreme Court on 14th February 2020.
- (iii) That, when the complete ban was lifted on 14th February 2020 by the Hon'ble Supreme Court, the Government of India imposed National Lockdown on 24th of March 2020 due to pandemic COVID-19, and conditionally unlocked it on 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. As the availability of STP, basic infrastructure and availability of water from STP was very limited in comparison to the requirement of water in the ongoing constructions activities



in Gurgaon District, it was becoming difficult to timely schedule the construction activities. The availability of treated water to be used at construction site was thus very limited and against the total requirement of water, only 10-15% of required quantity was available at construction sites.

28. That, owing to the above said force majeure circumstances and reasons beyond the control of the respondent company, it was extremely necessary to extend the intended date of offer of possession mentioned in the allotment letter.
29. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

31. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction



32. 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.

33. 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.

34. 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. Though while recording proceedings, M/s Prime IT Solutions Pvt. Ltd. was shown as one of the respondent but that was due to inadvertence, In fact that company was never ordered to be added as a party by the authority. All 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 07.10.2014 i.e., two years 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:



35. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant 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 07.10.2019. 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 complainant for refund:

G.1 Direct the respondent to refund the entire amount along with prescribed rate of interest.

36. The complainant booked a unit in the project of the respondent named as "Elvedor" situated at sector 37C, Gurgaon, Haryana for a total sale consideration of Rs. 27,59,356/-He paid an amount of Rs. 16,98,411/-. A buyers agreement was executed between the parties on 07.10.2014 and due date possession in accordance with the terms comes out to be 07.10.2019. 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.

37. Thus, 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 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 07.10.2019 and there is delay of 1 year 9 months 23 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-promoters. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have paid a considerable amount towards the sale consideration and as observed by *Hon'ble Supreme Court of India in Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019*, decided on 11.01.2021

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

39. Further in the judgement of the Hon'ble Supreme Court of India in the cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (2021-2022(1)RCR(Civil),357)* reiterated in case of



M/s Sana Realtors Private Limited & other Vs Union of India & others

SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. it was observed

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

40. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the 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.
41. 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.



42. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 16,98,411/- with interest at the rate of 10.00% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G.II. To direct the respondent to pay litigation cost of Rs. 60,000/-

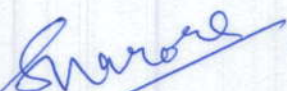
43. The complainant in the aforesaid head is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled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

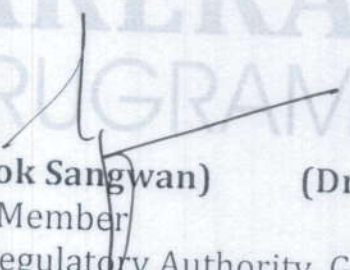
H. Directions of the Authority:

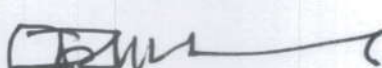
44. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:



- i) The respondent is directed to refund the amount i.e., **Rs. 16,98,411/-** received by them from the complainant along with interest at the rate of 10.00% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.
- ii) 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 the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.09.2022