

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

<b>Complaint no. :</b>	<b>97 of 2021</b>
<b>Date of filing complaint:</b>	<b>21.01.2021</b>
<b>Order Reserve On:</b>	<b>15.03.2023</b>
<b>Order Pronounced On:</b>	<b>26.04.2023</b>

<b>Prabhat Kumar</b> R/O: H. no. 39-AB, Tagore Garden, Ambala Cantt, Haryana-133001	<b>Complainant</b>
Versus	
<b>1. M/s Imperia Wishfield Pvt. Ltd.</b> Regd. office: A-25, Mohan Cooperative Industrial Estate, New Delhi-110044 <b>2. M/s Prime IT Solutions Pvt. Ltd.</b> Regd. Office: B-2/3, KH no. 8/8, Chattarpur Extn, New Delhi-110074	<b>Respondents</b>

<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Prabhat Kumar	Complainant
Sh. Rishi Kapoor (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 28 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", at 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-117, 1st floor, Tower Evita (page no. 41 of complaint)
8.	Unit area admeasuring (super area)	157 sq. ft. (page no. 41 of complaint)
9.	Allotment letter	23.10.2013 (page no. 20 of complaint)
10.	Date of builder buyer agreement	21.02.2014 (page no. 41 of complaint)

11.	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>
12.	Due date of possession	<p>21.02.2019</p> <p>(Calculated from the date of buyer's agreement)</p>
13.	Total sale consideration	<p>Rs. 16,88,896/-</p> <p>[as per agreement on page no. 47 of complaint]</p>
14.	Amount paid by the complainant	<p>Rs. 12,45,710/-</p> <p>[as per receipts annexed as annexure C-3 on page no. 22-35 of complaint]</p>
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not obtained

**B. Facts of the complaint:**



3. That the complainant purchased the shop no. E-117 from the original allottees Mrs. Shanti Dubey and Dr. Narayan Dubey in the project named as "Elvedor" situated at Sector 37-C, Gurgaon, Haryana for a valuable consideration and through proper process the shop was transferred in his name vide assignments and endorsements letter dated 17.7.2013.
4. That the complainant was informed by the respondent no. 1 that the project will be completed within a period of 60 months from the date of original booking i.e., 03-09-2012 and would handover possession of the shop in question in the said time period.
5. That the complainant was allotted shop no. E-117 admeasuring 157 sq. ft. in Tower- Evita in the commercial project known by the name and style of Elvedor on land admeasuring 2.0 acres situated at village Gharouli Khurd, Sector -37C, Gurgaon, Haryana from the respondent no.1.
6. That as per allotment letter dated 23.10.2023 the total sale consideration for the unit was Rs. 17,08,896/- inclusive of external development charges/ infrastructure development charges.
7. That till date a sum of Rs. 12,45,710/-, more than 70% of the basic sale price and all charges towards PLC and development charges, stands paid by the complainant against the said unit.
8. That at the time of booking of the above said unit the respondent no. 1 received 25% of BSP with service tax, i.e., Rs. 3,77,990/- as total booking amount and also assured the complainant of executing the builder buyer's agreement in a very short span of time but practically after giving many reminders the BBA was executed on 21.02.2014 after a gap of 1.5 years from the booking date of 03.09.2012 with ulterior motive to deprive him with delay compensation of this 1.5 years period against



the principles of natural justice. The intention of the respondent from the very beginning was to cheat the complainant.

9. That the builder buyer's agreement was executed between the complainant and respondent no. 1 on 21.02.2014 on a pre-defined format. The said agreement provided by the respondent no. 1 consisted of several one-sided clauses signed under undue pressure by the complainant as no one would relinquish his rights generated earlier and as such pre-set clauses, which also includes with respect to possession, are illegal.
10. That even after expiry of 7 years from the date of booking, till date only an undeveloped structure of one out of the several building forming part of the project has been erected on the project land incapable of possession and the project is still far from completion. Additionally, there is no other development on the project land from last four years and the construction activities have been stopped since 2016.
11. That after halt of the construction from last more than 3 years the complainant started making enquiries from the other allottees & he came to know of surprising facts that the respondent no. 1 neither have any right over the land, nor have requisite sanctions or approvals from the concerned competent authorities. As such all the representations provided by the respondent no. 1 to the complainant were deceptive and false. Further to confirm that fact the complainant moved some RTI applications with the competent authorities and shocked to know that the averments made above are true and these RTI replies which are par-se admissible.



12. That further, the license no. 47 of 2012 expired on 11.05.2016 and no application till today was made for renewal of the license. That important and essential fact was also actively concealed.
13. That the complainant also issued a notice/ email on 14.02.2020 to the respondent no. 1 for refund of the amount paid till date along with interest @ 24 per annum, within 15 days, but to no avail. As such, the complainant left with no other alternative or efficacious remedy available except to file this present complaint.

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

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

- (i) Refund the entire amount made to respondent no. 1 i.e., Rs. 12,45,710/- along with interest @ 24% p.a. from the date of deposit of the amounts till date of its refund.
- (ii) Direct the respondent to pay an amount of Rs. 3,00,000/- as compensation for harassment and mental agony to the complainant.
- (iii) Direct the respondent to pay compensation to the tune of Rs. 5,00,000/- on account of false claims regarding marketing, developing & booking/selling rights and ownership rights for the project, and for duping the complainant.
- (iv) Direct the respondent to pay an amount of Rs. 1,00,000/- to the complainant towards the cost of litigation.

**D. Reply by respondent no. 1:**

The respondent no. 1 by way of written reply made following submissions:

15. That unit no. E-117, admeasuring 157 sq. ft. 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.



17,96,804/-, vide allotment letter/ retail buyer agreement dated 21.02.2014 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. It is suffice to mention here that on the relevant date i.e., 06.12.2012 on which the collaboration agreement was signed. There were 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 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.

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, 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 were to 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."





20. 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.
21. 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 has filed an execution petition against the said 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 lastly listed for hearing on 25.08.2022. Pertinent to mention that, in the said execution, the answering respondent has prayed for recovery of Rs. 24.27 Crores towards balance construction cost of the project.
22. 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.
23. 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.



24. 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 remaining of these towers, 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.
25. That the respondent company requested for grant of 12 months' time to complete the said project enabling us to initiate possession related activities within that extended period of one year. In the meanwhile, the respondent company requests you to not pass any coercive monetary orders, so that it could devote cent percent of its resources in this project.
26. That, several allottees have withheld the remaining payments, severally affecting the financial health of the respondent company and due to the force majeure conditions and circumstances/reasons, beyond its control. 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 occur in future and that is why under the force majeure clause as mentioned in the allotment letter, it was duly agreed by them that the respondent 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 them 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." It 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) 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.
- (iii) 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.

- (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.
- (v) 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, that has left the great impact on the procurement of material and Labour. The 40-day lockdown in effect since March 24, 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 were stuck in relief camps. The aftermath of lockdown or post lockdown periods 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 also left 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.

- (vi) The real estate sector so far 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.

27. 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.

**E. Reply by respondent no. 2:**

28. That the above noted complaint filed by the complainant pertains to commercial unit/shop bearing no. E-117 located in the commercial project namely "Elvedor" situated in sector 37C, Gurugram measuring 157 square feet. The said booking had been made by the predecessor in interest of the complainant with respondent no. 1. All payments in respect of said shop had been made by the complainant to respondent no. 1. The complainant never had any privity of contract with respondent no. 2.
29. That the answering respondent has been wrongfully impleaded as party to the present litigation. Actually, the respondent number 2 has got nothing to do with the commercial project namely "Elvedor" situated in sector 37C, Gurugram. The complainant is conscious and aware of the fact that judgement and decree dated 21<sup>st</sup> of January 2016 had been passed by Mr. Sanjeev Kajla, the then Civil Judge Gurgaon in suit for declaration with consequential relief or permanent injunction titled "M/s Prime IT Solutions Private Limited Versus Mr. Devi Ram and another" in terms of which the construction/development/promotion/marketing and sale of the



aforesaid commercial project was to be undertaken by respondent number 1.

30. That respondent number 1 on its part has deliberately failed to fulfil its obligations as set out in compromise which forms the foundation of judgment and decree dated 21<sup>st</sup> of January 2016". The compromise referred to above is an integral part of the decree sheet prepared by the honourable court. The terms and conditions incorporated in the compromise are binding upon respondent number 1 with full force and effect and are part of the decree drawn up by the honourable court.
31. That it needs to be highlighted that the entire amount in respect of the said shop has been received from the complainant by respondent number 1 and had been realised and utilised by it alone. It needs to be highlighted that respondent number 1 is the exclusive developer of the aforesaid commercial project. The respondent number 2 has not received or utilised any money/consideration claimed to have been paid by the complainant or for that matter any other allottee of the aforesaid commercial project.
32. That more than 20 complaints relating to the same commercial project namely "Elvedor" have been earlier instituted before this honourable Authority. In none of these complaints, the respondent number 2 had been impleaded as party. It needs to be highlighted that the complainant, of the aforesaid complaints were fully conscious and aware of the fact that the development of the above-mentioned commercial project was being exclusively undertaken by respondent number 1. It is precisely for this reason that the respondent number 2 was not impleaded as party to the aforesaid complaints. Moreover, the complainant, of the aforesaid complaints realised that payments had been made by them to respondent number 1 and even documents of



allotment/agreements pertaining to the commercial units/shops forming part of the commercial project had been issued/executed by respondent number 1 in their favour.

33. That as per compromise dated 12<sup>th</sup> of January 2016 filed in the suit titled "M/s Prime IT Solutions Private Limited Versus Mr. Devi Ram and another" in terms of which judgment and decree dated 21st of January 2016 had been passed by Mr. Sanjeev Kajla, the then Civil Judge Gurgaon, all payments from purchasers in whose favour sale of areas in the project had already been made by respondent number 1 were to be deposited in a dedicated bank account. The mode of opening and operation of the aforesaid dedicated bank account was mentioned in the compromise referred to above and the same was maliciously flouted, ignored and disregarded by respondent no. 1.
34. That it needs to be mentioned that not a single inch of sanctioned space in the aforesaid commercial project has been sold by the respondent number 2. The payments contributed by purchasers of duly constructed commercial space in the aforesaid commercial project from respondent number 1 as well as payments made by the respondent number 2 have been siphoned off/ diverted and mis utilised by respondent number 1. Moreover, respondent number 1 has made every conceivable effort to push the gross illegalities, diversion, siphoning and mis utilisation of funds under the carpet. Respondent number 1 has also caused loss of revenues/funds to the concerned governmental authorities.
35. That it is pertinent to mention here that the Director Town and Country Planning, Haryana had also granted approval for change of developer relating to License No. 47 of 2012 dated 12.05.2012 vide Memo No. LC-2571/JE(S)/2022/16293 dated 09.06.2022.





36. That respondent no. 2 has already complied with its share of requirements emanating from memo dated 9<sup>th</sup> of June 2022. Although, the respondent number 2 was not required to remind respondent number 1 of its obligations arising out of dispatch of Memo dated 9<sup>th</sup> of June 2022 by Directorate of Town & Country Planning, Haryana, Chandigarh, yet by way of abundant caution letter dated 13.07.2022 had been dispatched by it to respondent number 1 to fulfil its obligations.
37. That thus, from the facts narrated above, it is comprehensively established that no financial or contractual liability of any nature is required to be discharged towards the complainant by respondent number 2. It is reiterated that the answering respondent has not received any amount whatsoever from the complainant. It needs to be appreciated that no promise or representation of any nature with regard to period of delivery/completion of the project.
38. That it has already been demonstrated above that respondent no.1 had indulged in large-scale bungling and siphoning of funds and had even failed to deposit the amounts received from the allottees in the dedicated bank account as directed by virtue of judgment and decree referred to above. The respondent no. 2 had brought the illegalities committed by respondent no. 1 to the attention of the concerned law-enforcement agencies by filing complaints to Economic Offences Wing, Gurugram and Economic Offences Wing, Delhi along with proof of money collected by respondent number 1 after passing of judgement and decree dated 21<sup>st</sup> of January 2016.
39. That cumulatively considering the facts circumstances of the present case, it is evident that the answering respondent has been wrongly and illegally impleaded as party to the present litigation. The entire liability



(if any) financial as well as contractual is to be discharged by respondent no. 1 exclusively. No liability of any nature can be fastened on respondent no. 2. The frivolous, vexatious, baseless and unfounded complaint preferred by the complainant is bereft of logic and devoid of merit and deserves to be dismissed against answering respondent.

40. 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.

**F. Jurisdiction of the authority:**

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

**F. I Territorial jurisdiction**

42. 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.

**F. II Subject matter jurisdiction**

43. 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.*

44. 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.

**G. Findings on the objections raised by the respondent no. 1:**

**G.I Objection regarding liability of M/s Prime IT Solutions Pvt. Ltd.**

While filing written reply on 13.09.2022, a specific plea was taken by the respondent no. 1 with regard to of M/s Prime IT Solutions Pvt. Ltd. as a necessary 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. So, in view of these facts, the presence of M/s Prime IT Solutions Pvt. Ltd. as a respondent before the authority is must for effective adjudication of the dispute between the parties. However, the plea advanced in this regard is devoid of merit. No doubt, there is



mention to that collaboration agreement in the buyer's agreement but the complainant-allottee is neither a party to that document executed on 06.12.2012 nor has any concern with the same. In fact, a perusal of buyers agreement dated 21.02.2014 shows mention to that collaboration agreement between the answering respondent and M/s Prime IT Solutions Pvt. Ltd. but the complainant is not a party to that collaboration agreement. It is further evident that the buyer's agreement was executed between the answering respondent and the complainant with regard to the subject unit and all the payments in pursuant to the same were received by the former from the later.

**G.II Objection regarding force majeure conditions:**

45. 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 21.02.2019. Hence, events alleged by the respondent do not have any impact on the project being developed by it. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter was required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency based on aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

**H. Entitlement of the complainant for refund:**

**H.I Refund the entire amount made to respondent no. 1 i.e., Rs. 12,45,710/- along with interest @ 24% p.a. from the date of deposit of the amounts till date of its refund.**

46. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-*

*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

***he shall be liable on demand to the allottees, in case 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 that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:***

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

*(Emphasis supplied)*

47. Clause 11(a) of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

*11(a).*

*Schedule for possession of the said unit*

*"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."*



48. The complainant booked the unit in the project of the respondent company situated at sector 37-C for a total sale consideration of Rs. 16,88,896/-. The buyer's agreement was executed between the parties on 21.02.2014. As per possession clause 11(a) of the buyer's agreement, the possession of the unit was to be handed over by within 60 months from the date of agreement. The due date for handing over of possession comes out to be 21.02.2019.
49. 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....."*

50. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (c), 357** reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022, it was observed as under:

*"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."*

51. 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) of the Act. 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.
52. 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.
53. **Admissibility of refund along with prescribed rate of interest:** The section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

*"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]*





(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

54. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
55. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 26.04.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
56. The authority hereby directs the respondent no. 1/promoter to return the amount received by him i.e., Rs. 12,45,710/- with interest at the rate of 10.70% (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 Rules *ibid*.

**H.II Direct the respondent to pay an amount of Rs. 3,00,000/- as compensation for harassment and mental agony to the complainant.**

**H.III Direct the respondent to pay compensation to the tune of Rs. 5,00,000/- on account of false claims regarding marketing,**



**developing & booking/selling rights and ownership rights for the project, and for duping the complainant.**

**H.III Direct the respondent to pay an amount of Rs. 1,00,000/- to the complainant towards the cost of litigation.**

57. 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.

**I. Directions of the Authority:**

58. 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/promoter no. 1 is directed to refund the entire amount of Rs. 12,45,710/- paid by the complainant along with prescribed rate of interest @ 10.70% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till the date of refund of the deposited amount.



**HARERA**  
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ii) A period of 90 days is given to that respondent to comply with the directions given in this order and failing which legal consequences would follow.

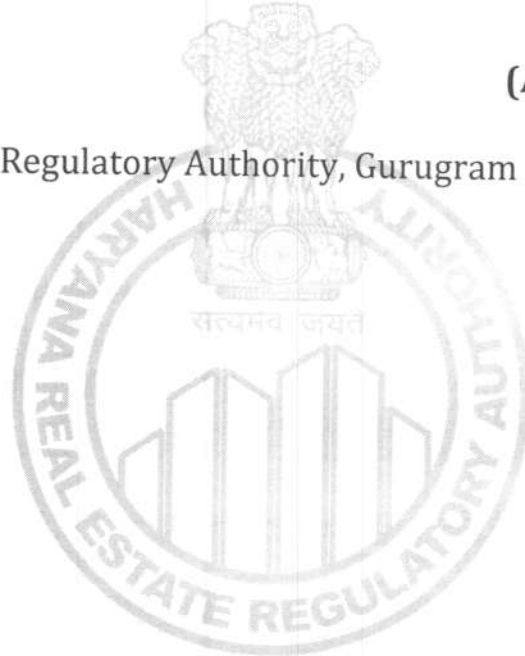
59. Complaint stands disposed of.

60. File be consigned to the registry.

(Ashok Sangwan)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.04.2023



**HARERA**  
**GURUGRAM**