

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

**Date of decision: 09.05.2023**

NAME OF THE BUILDER		M/S IMPERIA WISHFIELD PRIVATE LIMITED	
PROJECT NAME		ELVEDOR	
S. No.	Case No.	Case title	Appearance
1	CR/1176/2022	Manju Sharma V/s Imperia Wishfield Private Limited	Sh. Sushil Yadav Ms. Antara Mishra
2	CR/1033/2022	Ajay Kumar Bhardwaj V/s Imperia Wishfield Private Limited	Sh. Sushil Yadav Ms. Antara Mishra
3	CR/2313/2022	Sarita Sikchi V/s Imperia Wishfield Private Limited	Ms. Shreyas Malhotra Ms. Antara Mishra
4	CR/4682/2022	Sandhya Balwada Arora V/s Imperia Wishfield Private Limited	Sh. Sameer Tripathi Ms. Antara Mishra
5	CR/6220/2022	Mukesh Kumar V/s Imperia Wishfield Private Limited	Sh. Gulab Singh Jarodia MS. Antara Mishra
6	CR/6210/2022	Seema Yadav and Manmohan Yadav V/s Imperia Wishfield Private Limited	Sh. Gulab Singh Jarodia MS. Antara Mishra
7	CR/6219/2022	Satwant Kaur and Sarabjeet Singh Sethi V/s Imperia Wishfield Private Limited	Sh. Gulab Singh Jarodia MS. Antara Mishra
8	CR/6211/2022	Shakti Singh V/s Imperia Wishfield Private Limited	Sh. Gulab Singh Jarodia MS. Antara Mishra
9	CR/6218/2022	Aditi Paliwal V/s Imperia Wishfield Private Limited	Sh. Gulab Singh Jarodia MS. Antara Mishra
10	CR/6213/2022	Rekha Bagga and Neetu Rani Bagga V/s Imperia Wishfield Private Limited	Sh. Gulab Singh Jarodia MS. Antara Mishra

11	CR/6135/2022	Parmila Yadav V/s Imperia Wishfield Private Limited	Sh. Garvit Gupta Ms. Antara Mishra
12	CR/7542/2022	Durga Devi V/s Imperia Wishfield Private Limited	Sh. Ankit Bhasin Ms. Antara Mishra
13	CR/7543/2022	Ramesh Chander V/s Imperia Wishfield Private Limited	Sh. Ankit Bhasin Ms. Antara Mishra
14	CR/7570/2022	Braj Kishore Nathani V/s Imperia Wishfield Private Limited	Sh. Mohit kumar Ms. Antara Mishra
15	CR/7563/2022	Braj Kishore Nathani V/s Imperia Wishfield Private Limited	Sh. Mohit kumar Ms. Antara Mishra
16	CR/4217/2022	Sukesh Veauli and Opjinder Singh Deepak V/s Imperia Wishfield Private Limited	Ms. Shriya Singh Ms. Antara Mishra
17	CR/4594/2022	Manish Raijada and Surbhi Raijada V/s Imperia Wishfield Private Limited	Ms. Shriya Singh Ms. Antara Mishra

**CORAM:**

 Shri Ashok Sangwan  
 Shri Sanjeev Kumar Arora

**Member**  
**Member**
**ORDER**

1. This order shall dispose of the 17 complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Elvedor situated at Sector-37-C, Gurugram being developed by the same respondent/promoter i.e., M/s Imperia Wishfield Private Limited.



The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with delayed possession charges.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	"Elvedor" at sector 37C, Gurgaon, Haryana.
<b>Project area DTCP License No. Name of Licensee</b>	2 acres 47 of 2012 dated 12.05.2012 valid upto 11.05.2016 M/s Prime IT Solutions Pvt. Ltd.
<b>RERA Registration</b>	Not Registered
<b>Possession Clause: 11(a). SCHEDULE FOR POSSESSION OF THE SAID UNIT</b>	
<i>"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."</i>	
<b>Occupation Certificate:</b> Not obtained	

Sr. No	Complain t No., Case Title, and Date of filing of complain t	Date of apartme nt buyer agreeme nt	Unit No.	Unit adme asurin g	Due date of Possessi on	Total Sale Conside ration / Total Amount paid by the	Relief Sought
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						complainant	
1.	CR/1176/2022  Manju Sharma V/s Imperia Wishfield Private Limited  <b>DOF:</b> 15.03.2022  <b>Reply Status:</b> 02.05.2023	Not executed  Allotment Letter: 16.09.2013	4_S02	659 sq. ft.	16.09.2018 (As per possession clause calculated from date of allotment letter as BBA was not executed)	TSC: - Rs. 46,14,551/-  AP: - Rs. 11,08,649/-	Refund
2.	CR/1033/2022  Ajay Kumar Bhardwaj V/s Imperia Wishfield Private Limited  <b>DOF:</b> 10.03.2022  <b>Reply Status:</b> 01.05.2023	Not executed  Allotment Letter: 06.05.2013	IR_023, Ground Floor	421 sq. ft.	06.05.2018 (As per possession clause, calculated from date of allotment letter as BBA was not executed)	TSC: - Rs. 46,14,551/-  AP: Rs. 14,04,677	Refund



3.	CR/2313/ 2022  Sarita Sikchi V/s Imperia Wishfield Private Limited <b>DOF:</b> 03.06.202 2  <b>Reply Status:</b> 01.05.202 3	12.03.201 5	8_A04, 8th Floor, Tower Evita	659 sq. ft.	12.03.202 0	TSC: - Rs. 44,92,82 3/-  AP: Rs. 34,61,48 4/-	Refund
4.	CR/4682/ 2022  Sandhya Balwada Arora V/s Imperia Wishfield Private Limited <b>DOF:</b> 01.07.202 2  <b>Reply Status:</b> 01.05.202 3	31.03.201 4	11_A16, 11th Floor, Tower Evita	436 sq. ft.	31.03.201 9	TSC: - Rs. 34,45,75 6/-  AP: Rs. 29,52,27 8/-	Refund
5.	CR/6220/ 2022  Mukesh Kumar V/s Imperia Wishfield Private Limited	12.03.201 5	E.0103, Ground Floor, Tower Evita	260 sq. ft.	12.03.202 0	TSC: - Rs. 26,42,94 0/-  AP: Rs. 20,42,65 0/-	Refund

	<b>DOF:</b> 19.09.202 2  <b>Reply Status:</b> 02.05.202 3						
6.	CR/6210/ 2022  Seema Yadav and Manmoha n Yadav V/s Imperia Wishfield Private Limited  <b>DOF:</b> 19.09.202 2  <b>Reply Status:</b> 02.05.202 3	23.11.201 5	E.003, Ground Floor, Tower Evita	110 sq. ft	23.11.202 0	TSC: - Rs. 16,01,13 2/-  AP: Rs. 7,65,132 /-	Refund
7.	CR/6219/ 2022  Satvant Kaur and Sarabjeet Singh Sethi V/s Imperia Wishfield Private Limited	23.04.201 5	E.0108, Ground Floor, Tower Evita	260 sq. ft.	23.04.202 0	TSC: -Rs. 29,55,03 8/-  AP: Rs. 13,64,17 1/-	Refund

	<b>DOF:</b> 19.09.202 2						
	<b>Reply Status:</b> 01.05.202 3						
8.	CR/6211/ 2022  Shakti Singh V/s Imperia Wishfield Private Limited <b>DOF:</b> 28.09.202 2  <b>Reply Status:</b> 02.05.202 3	21.05.201 6	E.0114, Ground Floor, Tower Evita	260 sq. ft.	21.05.202 1	TSC: -Rs. 30,30,99 0/-  AP: Rs. 14,07,36 0/-	Refund
9.	CR/6218/ 2022 Aditi Paliwal V/s Imperia Wishfield Private Limited <b>DOF:</b> 28.09.202 2  <b>Reply Status:</b> 02.05.202 3	06.10.201 4	E.027, Ground Floor, Tower Evita	315 sq. ft.	06.10.201 9	TSC: -Rs. 31,92,91 4/-  AP: Rs. 27,43,74 1/-	Refund



10.	CR/6213/ 2022  Rekha Baga V/s Imperia Wishfield Private Limited <b>DOF:</b> 28.09.202 2  <b>Reply Status:</b> 02.05.202 3	31.01.201 4	E.029, Ground Floor, Tower Evita	315 sq. ft.	31.01.201 9	TSC: -Rs. 31,92,91 4/-  AP: Rs. 27,45,91 4/-	Refund
11.	CR/6135/ 2022  Parmila Yadav V/s Imperia Wishfield Private Limited <b>DOF:</b> 27.09.202 2  <b>Reply Status:</b> 01.05.202 3	Not executed  Date of Booking: 29.01.201 3	Not mentione d सद्यमेत द	Not mentio ned	29.01.201 8  (As per possessio n clause, calculated from date of booking as BBA was not executed)	TSC: -Rs. 35,93,25 0/-  AP: Rs. 11,79,18 9/-	Refund
12.	CR/7542/ 2022  Durga Devi V/s Imperia Wishfield Private Limited	24.04.201 4	5_A15, 5th Floor, Tower Evita	659 sq. ft.	24.04.201 9	TSC: -Rs. 47,68,10 4/-  AP: Rs. 39,96,76 4/-	Refund



	<b>DOF:</b> 15.12.202 2  <b>Reply Status:</b> 03.05.202 3						
13.	CR/7543/ 2022 Ramesh Chander V/s Imperia Wishfield Private Limited <b>DOF:</b> 15.12.202 2  <b>Reply Status:</b> 02.05.202 3	24.04.201 4	5_A10, 5th Floor, Tower Evita	659 sq. ft.	24.04.201 9	TSC: -Rs. 47,69,81 1/-  AP: Rs. 42,71,76 4/-	Refund
14.	CR/7570/ 2022 Braj Kishore Nathani V/s Imperia Wishfield Private Limited <b>DOF:</b> 21.12.202 2  <b>Reply Status:</b> 03.05.202 3	15.03.201 4	E047, Ground Floor, Tower Evita	315 sq. ft.	15.03.201 9	TSC: -Rs. 31,92,91 4/-  AP: Rs. 26,05,42 5/-	Refund

15.	CR/7563/ 2022  Braj Kishore Nathani V/s Imperia Wishfield Private Limited <b>DOF:</b> 21.12.202 2  <b>Reply Status:</b> 03.05.202 3	15.03.201 4	12_A11, 12th Floor, Tower Evita	659 sq. ft.	15.03.201 9	TSC: -Rs. 45,94,48 4/-  AP: Rs. 38,76,12 5/-	Refund
16.	CR/4217/ 2022  Sukesh Veauli V/s Imperia Wishfield Private Limited <b>DOF:</b> 20.06.202 2  <b>Reply Status:</b> 01.05.202 3	09.06.201 7	8_S02, 8th Floor, Tower 37th	659 sq. ft.	09.06.202 2	TSC: -Rs. 47,84,86 2/-  AP: Rs. 20,84,57 2/-	Refund
17.	CR/4594/ 2022 Manish Raijada and Surbhi Raijada V/s	10.11.201 4	3_A01, 3rd Floor, Tower Evita	436 sq. ft.	10.11.201 9	TSC: -Rs. 31,68,89 6/-  AP: Rs. 27,61,64 0/-	Refund



Imperia Wishfield Private Limited <b>DOF:</b> 20.06.202 2							
<b>Reply Status:</b> 01.05.202 3							
<b>Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:</b> <b>Abbreviation Full form</b> TSC Total Sale consideration AP Amount paid by the allottee(s)							

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due date, seeking refund of the total paid up amount.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/6220/2022 Mukesh Kumar V/s Imperia Wishfield Private Limited** are being taken into consideration for determining the rights of the allottee(s).

**A. Project and unit related details**

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

***CR/6220/2022 Mukesh Kumar V/s Imperia Wishfield Private Limited***

S. N.	Particulars	Details
1.	Name of the project	"Elvedor" at sector 37C, Gurgaon, Haryana
2.	Nature of the project	Commercial Project
3.	Project area	2 acres
4.	DTCP license no. and validity status	47 of 2012 dated 12.05.2012 Valid/renewed up to- 11.05.2016
5.	Name of licensee	M/s Prime IT Solutions Pvt. Ltd.
6.	RERA Registered/ not registered	Not Registered
7.	Unit no.	E.0103, Ground Floor, Tower Evita (page no. 28 of complaint)
8.	Unit area admeasuring	260 sq. ft. (page no. 28 of complaint)
9.	Allotment Letter	27.09.2013 (page no. 22 of complaint)
10.	Date of builder buyer agreement	12.03.2015 (page no. 23 of complaint)
11.	Due date of possession	12.03.2020



		(due date is calculated from the date of agreement i.e., 12.03.2015)
12.	Possession clause	<p><b>11(a) Schedule for possession of the said unit</b></p> <p>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 <b>within a period of 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 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.</p>
13.	Total sale consideration	<p>Rs. 26,42,940/-</p> <p>(as per agreement on page no. 28 of complaint)</p>
14.	Amount paid by the complainant	<p>Rs. 20,42,650/-</p> <p>(as per statement of account dated 07.08.2018 annexed in complaint on page no. 59 of complaint)</p>
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

**B. Facts of the complaint**

The complainant has made the following submissions in the complaint: -

8. That complainant after believing the statement of the representative of respondent applied for the allotment of a shop/unit bearing no E-0103 having the super area of 260 sq. ft in the project elvedor retail situated at sector-37C, Gurugram with total sale consideration of Rs. 26,42,940/- which including of PLC, IFMS, Electrical and other charges. The complainant duly paid the total consideration of Rs.20,42,650/-
9. That apart from issuing a payment receipt on different dates, the respondent company also issued an allotment letter dated 27.09.2013 carrying the details of unit allotted and also the details of amount to be deposited by the complainant time to time as per payment plan opted by him.
10. That the complainant deposited the required amount as per the payment plan opted by him according to the builder buyer agreement, which was executed between the complainant and the respondent company on 12.03.2015 following carrying all the details of terms and conditions of the said BBA were compiled by the complainant time to time as well as the respondent company from all the time as and when it was required.
11. That after several requests finally the respondent agreed to execute the builder buyer agreement with the complainant and ultimately it was executed on 12.03.2015 showing the total sale consideration of Rs.26,42,940.00/- including of fixtures & fittings, EDC & IDC, IFMS, electricity connection charges and other charges and again the respondent



assured the complainant that they have taken all necessary sanctions for the completion of aforesaid project.

12. That as per one of the terms and conditions of the said buyer's agreement dated 12.03.2015, in para no.11(a) it is clearly mentioned that regarding the possession of the said unit it was agreed and settled that the possession of the said unit/flat shall be handed over to the complainant within a stipulated period of 60 months from the date of builder buyer agreement dated 12.03.2015. Hence, from the above said clause as mentioned in buyer agreement, the respondent company was duty bound to handover the physical possession of the above said unit/shop to the complainant positively up to 12.03.2020 and it was told by the authorized person of respondent that till date they have never delayed the completion of any project they have in their hand.
13. That on account of not constructing the above said unit within the stipulated period of 60 months, the complainant kept on requesting the respondent company's officials to complete the construction of the said unit/shop as early as possible and handover the peaceful possession of the above said unit/shop. All the time the respondent kept on misguiding and putting forth the complainant on one reason or the others and could not adhere to the terms and conditions as settled and agreed upon between the respondent and the complainant. And that so much so the respondent company failed to handed over the physical possession of the above said unit to the complainant till date
14. That due to illegal acts and conducts of the respondent, the complainant(s) had been suffered to great mental agony, physical harassment, financial loss, humiliation, hence the complainant is entitled to get the refund of

amount of Rs.20,42,650/- deposited by the complainant with the respondent, as mentioned above along with interest.

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

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

I. Direct the respondent to refund the amount of Rs. 20,42,650/- paid by the complainant along with interest @ 24% p.a.

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

**D. Reply by the respondent**

The respondent has contested the complaint on the following grounds.

17. That the complainant, after making independent enquiries and only after being fully satisfied about the project, had approached the respondent company for booking of a residential unit in respondent's project 'Elvedor' located in sector-37-C, Gurugram, Haryana. The respondent company provisionally allotted the unit bearing no. E.0103 in favor of the complainant for a total consideration amount of Rs. 27,72,923/- including applicable tax and additional miscellaneous charges vide booking dated 20.08.2012 and opted the construction-linked payment plan on the terms and conditions mutually agreed by them.

18. That the said project is a commercial project which was being developed on 2 acres of land and comprises of retail and studio apartments. The foundation of the said project vests on the joint venture/collaboration between M/s 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



(as One Party) and M/s Imperia Structures Pvt. Ltd. (as Second Party), laying down the transaction structure for the said project and for creation of SPV (Special Purpose Vehicle) Company, named and titled as Imperia Wishfield Pvt. Ltd.', i.e. the respondent company.

19. That the role of M/s Prime IT Solutions Pvt. Ltd. was indicated to the allottees at the time of booking the said unit, and it was conveyed that Ms Prime IT Solutions Pvt. Ltd. was the owner of the said Land and 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 being an associate/JV Company is undertaking implementation of the said project. The involvement of M/s Prime IT Solutions Pvt Ltd has been duly acknowledged by the complainant herein and the same is an undisputed fact.
20. That in lieu of above said understanding & promises, M/s 'Imperia Wishfield Pvt. Ltd.' was incorporated & formed with 4 Directors & 5 shareholders. Mr. Pradeep Sharma and Mr. Avinash Kumar Setia were from Ms Prime IT Solutions Pvt. Ltd. and Mr. Harpreet Singh Batra and Mr. Brajinder Singh Batra were from M/s Imperia Structures Pvt Ltd.
21. That 3 out of 5 shareholders of the respondent company, to the tune of 2500 shares each, amounting to Rs. 15,00,000/- each were from M/s Prime IT Solutions Pvt. Ltd. and remaining 2 Shareholders of the respondent company, to the tune of 3750 shares each were from M/s Imperia Structures Pvt. Ltd.
22. That the respondent company undertook the construction and development of the said project, without any obstruction and interference from any other party. The land for execution of the said project was registered under the name of M/s Prime IT Solutions Pvt. Ltd., which is also



the licensee or license holder of the said land. Thus, it is evident on bare perusal of the facts and of Section 2(k) of the Real Estate (Regulation and Development) Act, 2016, which defines a 'promoter', that the said project has two promoters, i.e., Ms Prime IT Solutions Pvt. Ltd. and M/s Imperia Wishfield Pvt. Ltd., i.e., respondent company.

23. That in pursuance to the above-mentioned venture, M/s Prime IT Solutions Pvt. Ltd., represented and confirmed to the respondent company that Ms Prime IT Solutions Pvt. Ltd. had already procured Letter of Intent ('LOI) from the Department of Town and Country Planning, Government of Haryana, on 24.05.2011, along with 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, along with the Zoning Plan, however, the same was a planned approach to defraud the respondent company and later on it was found to be untrue and the Ms Prime IT Solutions Pvt. Ltd. has not complied with any of the abovementioned promises & covenants.
24. That the annual return of 2013-2014 shows the list of Directors at the time when the allotment letter was issued (mentioning that Avinash Setia and Pradeep Sharma were also Directors at that time).
25. That on the date of allotment, Mr. Pradeep Sharma and Mr. Avinash Kumar Setia were also directors as well as shareholders of the respondent company.
26. That in pursuance of a compromise deed dated 12.01.2016, between Ms Prime IT Solutions Pvt. Ltd, and the respondent company, a decree sheet was prepared on 21.01.2016, in a suit titled 'M/s Prime IT Solutions Pvt. Ltd. v. Devi Ram and Imperia Wishfield Pvt. Ltd.', vide which both M/s



Prime IT Solutions Pvt. Ltd. and the respondent company resolved to take collective decisions for implementation of the said project and that all the expenses incurred in the process, from the dedicated project account, which would be in the name of 'M/s Imperia Wishfield Limited Elvedor Account'.

27. That the plaintiff in the above-quoted compromise deed is M/s Prime IT Solutions Pvt. Ltd. and this confirms the active involvement/participation of M/s Prime IT Solutions Pvt. Ltd. in the said project. These clauses bring to light the fact that Ms Prime IT Solutions Pvt. Ltd. was equally responsible for the funds collected for the execution of the said project and the money taken from allottees/complainant was under the access/usage/management/dispense/supervision of Ms Prime IT Solutions Pvt. Ltd. It is also germane to mention herein that behind the garb of nomenclature of the said bank account, M/s Prime IT Solutions Pvt. Ltd. was also recipient of money deposited by the allottees.
28. That in lieu of the above said, Ms Prime IT Solutions Pvt. Ltd. issued a letter dated 23.12.2021 to the Directorate of Town Country Planning, Haryana (hereinafter referred to as 'DTCP'), requesting for grant of permission to change of developer from M/s Prime IT Solutions Pvt. Ltd. to the respondent company, for setting up the said project, in response to which DTCP issued a letter bearing Memo No. LC-2571/JE(S)/2022/16293 dated 09.06.2022, acknowledging the request of M/s Prime IT Solutions Pvt. Ltd. and directing terms and conditions for the same. This also clearly depicts that Ms Prime IT Solutions Pvt. Ltd. was/is developer for the said project at the time of allotment, thus, concretizing the involvement and liability of M/s Prime IT Solutions Pvt. Ltd. with respect to the said project. This letter



was replied to by Ms Prime IT Solutions Pvt. Ltd. vide Letter dated 13.07.2022.

29. That the said project suffered a huge setback by the act of non-cooperation of M/s Prime IT Solutions Pvt. Ltd., which proved to be detrimental to the progress of the said project as majority of the fund deposited with the above-mentioned project account by the allottees was under the charge of M/s Prime IT Solutions Pvt. Ltd. and the said fund was later diverted by the Ms Prime IT Solutions Pvt. Ltd., leaving the respondent company with nearly no funds to proceed along with the said project.
30. That on perusal of all the records submitted herein and after referring to the endless precedents, it is evident that the M/s Prime IT Solutions Pvt. Ltd., Mr. Avinash Kumar Setia and Mr. Pradeep Sharma are equally responsible towards the complainant as the respondent company.
31. 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, which were beyond the control of the respondent company as mentioned herein below, the construction got delayed in the said project.
32. 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 that some delay might occur 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 was unequivocally agreed between the complainant and the respondent company that the respondent



company is entitled to extension of time for delivery of the said flat on account of force majeure circumstances beyond the control of the respondent company. Firstly, owing to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court ordered a ban on construction activities in the region from 04.11.2019 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 09.11.2019 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 14.02.2020. Secondly, after the complete ban was lifted on 14.02.2020 by the Hon'ble Supreme Court, the Government of India imposed National Lockdown on 24.03.2020 on account of nation-wide pandemic COVID-19, and conditionally unlocked it on 03.05.2020, However, this has left a great impact on the procurement of material and labour. The 40-day lockdown effective since 24.03.2020, extendable up to 03.05.2020 and subsequently to 17.03.2020, 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 left a great impact on the sector for resuming the fast pace construction for achieving the timely delivery as agreed under the allotment letter.

33. That the said project suffered a huge setback by the act of non-cooperation of M/s Prime IT Solutions Pvt. Ltd., which proved to be detrimental to the progress of the said project as majority of the fund deposited with the above-mentioned project account by the allottees was under the charge of

M/s Prime IT Solutions Pvt. Ltd. and the said fund was later diverted by the M/s Prime IT Solutions Pvt. Ltd, leaving the respondent company with nearly no funds to proceed along with the said project.

34. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

35. 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**

36. 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**

37. 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**

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(4) The promoter shall-



*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

38. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

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

39. While filing written reply, 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. 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. However, 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 executed between the parties on 12.03.2015 i.e., after signing of collaboration agreement. The factum of merely mentioning with regard to collaboration agreement in the buyer's agreement does not ipso facto shows that M/S Prime IT Solutions Pvt. Ltd. should have been added as a respondent. Moreover, the payments against the allotted units were received by the respondent/builder. So, taking into consideration all these facts it cannot be said that joining of M/s Prime IT Solutions Pvt. Ltd. as a respondent was must and the authority can proceed in its absence in view of the provision contained in Order 1 Rules 4 (b) and 9 of Code of Civil Procedure, 1908.

#### **F.II Objection regarding force majeure conditions:**

40. 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 12.03.2020. 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. Findings on the relief sought by the complainant**

1. Direct the respondent to refund the amount of Rs. 20,42,650/- paid by the complainant along with interest @ 24% p.a.

41. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by them 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)*

42. 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."*

43. The complainant had booked the unit in the project of the respondent company situated at sector 37-C for a total sale consideration of Rs. 26,42,940/-. The buyer's agreement was executed between the parties on 12.03.2015. 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 12.03.2020.
44. 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....."*

45. 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."*

46. 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 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.
47. 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.
48. **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."*

49. 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.
50. 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., 09.05.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
51. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 20,42,650/- 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. Directions of the authority**





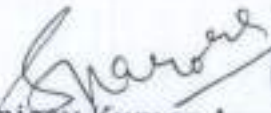
52. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the entire amount paid by the complainants in all the above-mentioned cases 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.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

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

54. The complaints stand disposed of.

55. Files be consigned to registry.

  
(Sanjeev Kumar Arora)

**Member**

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.05.2023

  
(Ashok Sangwan)

**Member**