

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

Date of decision: 22.02.2023

NAME OF THE BUILDER		M/S IMPERIA WISHFIELD PVT. LTD.	
PROJECT NAME		ELVEDOR	
S. No.	Case No.	Case title	Appearance
1	CR/1768/2022	Biswaranjan Parida V/S M/s Imperia Wishfield Pvt. Ltd.	Shri Aditya Vijay Kumar Ms. Antara Mishra
2	CR/1769/2022	Rajesh Kumar V/S M/s Imperia Wishfield Pvt. Ltd.	Shri Aditya Vijay Kumar Ms. Antara Mishra
3	CR/1770/2022	Atul Kumar Varshney V/S M/s Imperia Wishfield Pvt. Ltd.	Shri Aditya Vijay Kumar Ms. Antara Mishra
4	CR/1771/2022	Pradeep Kumar V/S M/s Imperia Wishfield Pvt. Ltd.	Shri Aditya Vijay Kumar Ms. Antara Mishra

**CORAM:**

Shri Ashok Sangwan

**Member****ORDER**

1. This order shall dispose of all the four 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.
- 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, The Elvedor situated at Sector-37 C, Gurugram being developed by the same respondent/promoter i.e., M/s Imperia Wishfield Pvt. Ltd. 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.
  - 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>	<b>"The Elvedor" at sector 37C, Gurgaon, Haryana.</b>
<b>Nature of Project</b>	Commercial Project
<b>Project area</b>	02 acres
<b>DTCP License No.</b>	47 of 2012 dated 12/05/2012 valid upto 11.05.2016
<b>Name of Licensee</b>	M/s Prime IT Solutions Pvt. Ltd.
<b>Rera Registered</b>	Not Registered
<b>Possession Clause: - 11(a) Schedule for possession of the said unit</b>	
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.

Sr. No	Complain No., Case Title, and Date of filing of complaint	Unit No.	Unit adm easuring	Date of apartment buyer agreement	Due date of possession	Total Sale Consideration / Total Amount paid by the complainant	Relief Sought
1.	CR/1768 / 2022  Biswaranjan Parida V/S M/s Imperia Wishfield Pvt. Ltd.  DOF: 29.04.2022  Reply: 12.10.2022	0100, Ground Floor, Tower Evita  (page no. 64 of complaint)	260 sq. ft.	17.01.2015	17.01.2020	TSC: - Rs.29,55,038/-  AP: - Rs.11,11,213/-	Direct the respondent to refund the entire amounts deposited by the complainant together with the prescribed rate of interest.
2.	CR/1769 / 2022 Rajesh Kumar V/S M/s Imperia Wishfield Pvt. Ltd.	E.011, Ground Floor, Tower Evita  (page no. 61 of complaint)	315 sq. ft.	16.12.2013	16.12.2018	TSC: - Rs.32,57,844/- AP: Rs. 23,13,624/-	Direct the respondent to refund the entire amounts deposited by the

	<b>DOF:</b> 29.04.20 22  <b>Reply:</b> 12.10.20 22						complainant together with the prescribed rate of interest.
3.	CR/1770 / 2022  Atul Kumar Varshney V/S M/s Imperia Wishfield Pvt. Ltd  <b>DOF:</b> 29.04.20 22  <b>Reply:</b> 14.10.20 22	G 70, Ground Floor, Tower 37 <sup>th</sup> Avenue	315 sq. ft.	17.12.20 16  (page no. 53 of complainant)  (Inadvertently mentioned in the proceedings dated 22.02.2023 as 13.09.2023 as 13.09.2016)	17.12.2021  (Inadvertently mentioned in the proceedings dated 22.02.2023 as 13.09.2021)	TSC: - Rs. 34,36,685 /-  AP: - Rs. 15,87,969 /-	Direct the respondent to refund the entire amounts deposited by the complainant together with the prescribed rate of interest.
4.	CR/1771 / 2022  Pradeep Kumar V/S M/s Imperia Wishfield Pvt. Ltd.  <b>D.O.F:</b> 29.04.20 22	A02 4th Floor, Tower Evita (page no. 98 of complainant)	659 sq. ft.	12.09.20 16	12.09.2021	TSC: - Rs. 46,07,605 /-  AP: - Rs. 14,02,102 /-	Direct the respondent to refund the entire amounts deposited by the complainant together with the prescribed rate of interest.



	<b>Reply:</b> 14.10.20 22							d rate of interest.
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**Note: In the table referred above certain abbreviations have been used.**

**They are elaborated as follows:**

**Abbreviation Full form**

TSC Total Sale consideration

AP Amount paid by the allottee(s)

- 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 the physical possession of the unit along with delayed possession charges.
- 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.
- 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/1768/2022 Biswaranjan Parida V/S M/s Imperia Wishfield Pvt. Ltd.* are being taken into consideration for determining the rights of the allottee(s).

**A. Project and unit related details**

- 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/1768/2022 Biswaranjan Parida V/S M/s Imperia Wishfield Pvt.  
Ltd.**

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	02 acres
4.	DTCP license no. and validity status	47 of 2012 dated 12/05/2012 valid upto 11.05.2016
5.	Name of licensee	M/s Prime IT Solutions Pvt. Ltd.
6.	RERA Registered/ not registered	<b>Not registered</b>
8.	Unit no.	0100, Ground Floor, Tower Evita (page no. 64 of complaint)
9.	Unit area admeasuring	260 sq. ft. (page no. 64 of complaint)
10.	Date of builder buyer agreement	17.01.2015 (page no. 58 of complaint)
11.	Due date of possession	17.01.2020 [calculated as per possession clause]
12.	Possession clause	<b>11(a) Schedule for possession of the said unit</b>  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. <b>(emphasis supplied)</b>
13.	Total sale consideration	Rs. 29,55,038/- [as per the agreement on page no. 64 of complaint]
14.	Amount paid by the complainants	Rs. 11,11,213/- (as per aversions of the complainant)
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:

17. That the complainant vide an application form bearing number IWF-R-0467 dated 12.11.2012, applied for the allotment of a commercial retail shop which previously had a super built up area of 421 sq. ft. which was later unilaterally changed to 260 sq. ft. in the project named "Elvedor".

18. That after 25 months from the receipt of the welcome letter, the respondent provided the retail buyer's agreement (hereinafter referred to as "buyer's agreement") vide a letter dated 17.01.2015. The retail buyer's agreement records his payments of Rs. 11,11,213/- towards the booking of the unit. In respect of the Elvedor project, it was being constructed on a land admeasuring 2 acres (16 Kanals) situated in the revenue estate of Garauli Khurd, Tehsil and District Gurgaon in Section 37C, Gurgaon (hereinafter referred to as "2 Acre Land"). In the 2-acre land, it was represented that the said land was owned in part by one Mr. Devi Ram, S/o Amar Singh and in the other part by M/s Prime IT Solutions Private Limited. Owners of the 2 Acre Land had entered into a collaboration agreement and general power of attorneys in favor of M/s Prime IT Solutions Private Limited (hereinafter referred to as "Prime IT Solutions"). Prime IT Solutions subsequently applied for and purportedly obtained a license from DTCP, Haryana bearing No. 47 of 2012 dated 12.05.2012 in respect of the project land. Subsequently, Prime IT Solutions entered into collaboration with the Respondent pursuant to which the project was being implemented. However, actually no registered collaboration agreement was executed. It was further represented that development plans had also been approved on 24.05.2011 and based on such approvals, the respondent was competent and entitled to execute the project.

19. That the project had remained stalled for 9 years, the complainant accordingly made several requests to the respondent asking them to throw some light on the actual status of the construction of the project, vide emails dated 12.07.2019 and 14.03.2020 but the respondent did not provide any response



20. That again vide an email dated 21.05.2020 enquired about the status of the project. Finally, the respondent vide an email dated 21.05.2020, assured the complainant that the possession of the commercial unit would be handed over by end of 2021.
21. That the construction activity of the project did not even start till November 2021, the complainant again issued an email dated 09.11.2021 and asked for the status of the construction activity of the project and as to when the same would start. Vide email dated 11.11.2021, the respondent provided an evading and vague response and did not provide any date for the starting of the project, but merely stated that the project would be completed by end of 2022. This led to the complainant again responding to the email and specifically asking that the date of commencement of construction work. However, the respondent did not issue any email in response to the complainant's email. The complainant again vide email dated 24.11.2021 stated that the construction work had not been resumed by the respondent.
22. That even after expiry of 9 years from the date of booking, till date only a rudimentary structure of one out of the several buildings forming part of the project was erected on the project land which is incapable of possession. Hence, the present complaint is being filed seeking the refund of the consideration paid by them along with interest at the prescribed rate till date of filing of the instant complaint.

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

23. The complainant has sought following relief(s):
1. Direct the respondent to refund the entire amounts deposited by the complainant together with the prescribed rate of interest.





24. 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.

25. That unit no. E-0100 admeasuring 260 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. 31,38,435/-, vide allotment letter/ retail buyer agreement dated 19.01.2015 on the terms and conditions mutually agreed by the parties.
26. The said project is a commercial project being developed on two acres of land situated at Sector 37-C, Gurugram, Haryana and comprises of retail and studio apartments. The foundation of the said project vests on the joint venture agreement executed between M/s Prime IT Solutions Pvt. Ltd. and Imperia Structure Pvt. Ltd. lying down the transaction structure for the project and for creation of SPV company, named and styled as "Imperia Wishfield Pvt. Ltd.". Later, collaboration agreement dated 06.12.2012 as executed between M/s Prime IT Solutions Private Limited (on one part) and M/s Imperia Wishfield Pvt. Ltd. (on the second part). In terms of the said collaboration agreement, the second party i.e., Imperia Wishfield Pvt. Ltd was legally liable to undertake construction and development of the project at its own costs, expenses and resources in the manner it deems fit and proper without any obstruction and interference from any other party. The referred collaboration agreement has been signed by representative of M/s Prime IT Solutions Private Limited and Imperia Wishfield Pvt. Ltd. Suffice to mention here that on the relevant



date i.e., 06.12.2012 on which the collaboration agreement was signed, there are common directors in both these companies i.e., in M/s Prime IT Solutions Private Limited and M/s Imperia Wishfield Pvt. Ltd.

27. 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.

28. 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.
29. Further, it is also relevant to mention here that in terms of compromise dated 12.01.2016 a decree sheet was prepared on 21.01.2016 in a suit titled M/s Prime IT Solutions Pvt. Ltd. Vs Devi Ram & Imperia Wishfield Pvt. Ltd. As per this compromise, both M/s Imperia Wishfield Pvt. Ltd. and M/s Prime IT Solutions Pvt. Ltd. apart from other points, agreed to take collective decision for the implementation of the project and all expenses related to the project would be jointly incurred by both the parties from the dedicated project account which would be in the name of "M/s Imperia Wishfield Limited Elvedor Account."
30. 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 the project have been taken away by said JV partner.
31. 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.
32. 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”.*

33. 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.
34. That in view of the above stated the respondent company requested for grant of 12 months' time to complete the said project enabling us to initiate possession related activities within this extended period of one year. In the meanwhile, the respondent company requests you to not pass any coercive monetary orders in this period.
35. 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) 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. The orders already placed on record before this Hon'ble Bench.



- (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, 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."
- (vi) 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.



(vii) That initially, after obtaining the requisite sanctions and approvals from the concerned Authorities, the respondent company had commenced construction work and arranged for the necessary infrastructure including labour, plants and machinery, etc. However, since the construction work was halted and could not be carried on in the planned manner due to the force majeure circumstances detailed above, the said infrastructure could not be utilized and the labour was also left to idle resulting in mounting expenses, without there being any progress in the construction work. Further, most of the construction material, which was purchased in advance, got wasted/deteriorated causing huge monetary losses. Even the plants and machineries, which were arranged for the timely completion of the construction work, got degenerated, resulting into losses to the respondent company running into crores of rupees.

36. 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.

37. 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**

38. 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

39. 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

40. 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) 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.*

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

42. While filing written reply on 12.10.2022, a specific plea was taken by the respondent with regard to non-joining of M/s Prime IT Solutions Pvt. Ltd. as a party in the complaint. It is pleaded by the respondent that there was joint venture agreement executed between it and M/s Prime IT Solutions Pvt. Ltd., leading to collaboration agreement dated 06.12.2012 between them. On the basis of that agreement, the respondent undertook to proceed with the construction and development of the project at its own cost. Moreover, even on the date of collaboration agreement the directors of both the companies were common. A reference to that agreement was also given in the letter of allotment as well as buyers agreement. So, in view of these facts, the presence of M/s Prime IT Solutions Pvt. Ltd. as a respondent before the authority is must and be added as such. But the pleas advanced in this regard are devoid of merit. No doubt there is mention to that collaboration agreement in the buyer's agreement but the complainant allottee was not a party to that document executed on 06.12.2012. If the IT Solutions would have been a necessary party, then it would have been a signatory to the buyer's agreement executed between the parties on 17.01.2015 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:**

43. 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 17.01.2020. 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. Entitlement of the complainant for refund:**

(i) **Direct the respondent to refund the entire amounts deposited by the complainant together with the prescribed rate of interest.**

44. 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)*

45. 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 just exceptions endeavours 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.*

46. The complainant had booked the unit in the project named as "Elvedor" situated at Sector 37-C for a total sale consideration of Rs. 29,55,038/-. The flat buyer agreement was executed between the parties on 17.01.2015. As per possession clause 11 (a) of the buyer's agreement, the possession of the unit was to be handed over within 60 months from the date of agreement (17.01.2015). The due date for handing over of possession comes out to be 17.01.2020.





47. 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....."*

48. 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."*



49. 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.
50. 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.
51. **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.”*



52. 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.

53. 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., 22.02.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.

54. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 11,11,213/- 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**

55. 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 of 64,14,904/- respectively paid by the complainants (in all the four complaints) along with prescribed rate of interest @ 10.70% p.a. as prescribed under rule 15 of the Haryana Real Estate



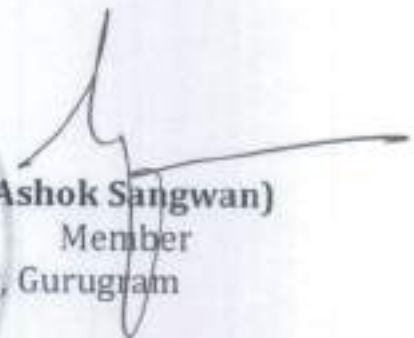
(Regulation & Development) Rules, 2017 from the date of each payment till the date of refund of the deposited amount.

- 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.

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

57. The complaints stand disposed of.

58. Files be consigned to registry.



**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.02.2023

**HARERA**  
**GURUGRAM**

