BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of decision: 21.07.2023

NAME OF THE BUILDER		M/S IMPERIA WISHFIELD PRIVATE LIMITED	
PROJECT NAME		ELVEDOR	
S. No.	Case No.	Case title	Appearance
1	CR/6242/2022	Suresh Kumar Chugh V/s Imperia Wishfield Private Limited	Sh. Gulab Singh Jarodia Sh. Roopam Singh
2	CR/6241/2022	Suresh Kumar Chugh V/s Imperia Wishfield Private Limited	Sh. Gulab Singh Jarodia Sh. Roopam Singh
3	CR/6238/2022	Atul Kumar Tiwari and Kanchan Tiwari V/s Imperia Wishfield Private Limited	Sh. Gulab Singh Jarodia Sh. Roopam Singh
4	CR/6237/2022	Niraj Chaubey and Shweta Pandey V/s Imperia Wishfield Private Limited	Sh. Gulab Singh Jarodia Sh. Roopam Singh
5	CR/6398/2022	Suman Yadav and Kamla Rani Yadav V/s Imperia Wishfield Private Limited	Sh. Satyawan Kudalwal Sh. Roopam Singh
6	CR/6399/2022	Arun Arora and Neelam Arora V/s Imperia Wishfield Private Limited	Sh. Satyawan Kudalwal Sh. Roopam Singh
7	CR/6396/2022	Kalyani Kumar and S Vijay Kumar V/s Imperia Wishfield Private Limited	Sh. Satyawan Kudalwal Sh. Roopam Singh
8	CR/6397/2022	Ravi Gupta V/s Imperia Wishfield Private Limited	Sh. Satyawan Kudalwal Sh. Roopam Singh
9	CR/6395/2022	Rajinder Singh Dahiya V/s Imperia Wishfield Private Limited	Sh. Satyawan Kudalwal

			Sh. Roopam Singh
10	CR/6547/2022	Reema Khanna and Pankaj Khanna V/s Imperia Wishfield Private Limited	Sh. Pradeep Kumar Sehrawat Sh. Roopam Singh
11	CR/6297/2022	Ms Rakesh Rani V/s Imperia Wishfield Private Limited	Sh. Pradeep Kumar Sehrawat Sh. Roopam Singh
12	CR/6332/2022	Anuradha Jain V/s Imperia Wishfield Private Limited	Sh. Pradeep Kumar Sehrawat Sh. Roopam Singh
13	CR/6311/2022	Rajdeep Sharma And Tejender Kumar V/s Imperia Wishfield Private Limited	Sh. Pradeep Kumar Sehrawat Sh. Roopam Singh
14	CR/6326/2022	Manish Sinha V/s Imperia Wishfield Private Limited	Sh. Pradeep Kumar Sehrawat Sh. Roopam Singh

CORAM:

Shri Sanjeev Kumar Arora **Member**

ORDER

1. This order shall dispose of the 14 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 refund of the allotted unit.

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:

Project Name and Location	**"Elvedor" at sector 37C, Gurgaon, Haryana.**
Project area **DTCP License No.** **Name of Licensee**	2 acres 47 of 2012 dated 12.05.2012 valid upto 11.05.2016 M/s Prime IT Solutions Pvt. Ltd.
RERA Registration	Not Registered
Possession Clause: 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 .*	
Occupation Certificate: Not obtained	

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Date of apartment buyer agreement	Unit No.	Unit admeasuring	Due date of Possession	Total Sale Consideration / Total Amount paid by the complainant	Relief Sought
1.	CR/6242/2022 Suresh Kumar Chugh V/s Imperia Wishfield Private Limited **DOF:** 29.09.2022 **Reply Status:** 18.07.2023	09.02.2015	E-0160, Ground Floor, Tower Evita	315 sq. ft.	09.02.2020	TSC: - Rs. 36,93,823/- AP: - Rs. 12,51,000/-	Refund
2.	CR/6241/2022 Suresh Kumar Chugh V/s Imperia Wishfield Private Limited **DOF:** 29.09.2022	09.02.2015	E.0162, Ground Floor, Evita Tower	315 sq. ft.	09.02.2020	TSC: - Rs. 36,93,823/- AP: Rs. 12,51,000/-	Refund

	Reply Status: 18.07.2023						
3	CR/6238/2022 Atul Kumar Tiwari and Kanchan Tiwari V/s Imperia Wishfield Private Limited **DOF:** 29.09.2022 **Reply Status:** 18.07.2023	22.09.2016	F-59, 1st Floor, Block B, Tower 37th Avenue	232 sq. ft.	22.09.2021	TSC: - Rs. 26,81,205/- AP: Rs. 11,25,755/-	Refund
4	CR/6237/2022 Neeraj Choubey and Sweta Pandey V/s Imperia Wishfield Private Limited **DOF:** 29.09.2022	11.12.2014	E.179, 1st Floor, Tower Evita	157 sq. ft.	11.12.2019	TSC: - Rs. 18,80,640/- /- AP: Rs. 15,85,134/-	Refund

	Reply Status: 18.07.2023						
5	CR/6398/2022 Suman Yadav V/s Imperia Wishfield Private Limited **DOF:** 29.09.2022 **Reply Status:** 18.07.2023	06.03.2014	11_A14, 11th Floor, Tower Evita	659 sq. ft.	06.03.2019	TSC: -Rs. 46,49,411/- AP: Rs. 37,39,215/-	Refund
6	CR/6399/2022 Arun Arora and Neelam Arora V/s Imperia Wishfield Private Limited **DOF:** 29.09.2022 **Reply Status:** 18.07.2023	03.03.2015	7_A03, 7th Floor, Tower Evita	659 sq. ft.	03.03.2020	TSC: -Rs. 53,78,833/- AP: Rs. 20,06,064/-	Refund

7	CR/6396/2022 Kalyani Kumar and S Vijay Kumar V/s Imperia Wishfield Private Limited **DOF:** 29.09.2022 **Reply Status:** 18.07.2023	12.02.2014	6_A09, 6th Floor	659 sq. ft.	12.02.2019	TSC: -Rs. 45,42,143/- AP: Rs. 43,27,196/-	Refund
8	CR/6397/2022 Ravi Kumar Gupta V/s Imperia Wishfield Private Limited **DOF:** 29.09.2022 **Reply Status:** 18.07.2023	Not executed Allotment Letter: 12.11.2014	3_A22	436 sq. ft.	12.11.2019 (calculated from the date of allotment letter as BBA was not executed)	TSC: -Rs. 34,90,743/- AP: Rs. 14,42,713/-	Refund
9	CR/6395/2022	05.12.2013	7_A09, 7th Floor,	659 sq. ft.	05.12.2018	TSC: -Rs. 42,27,176/-	Refund

	Rajender Singh Dhaiya V/s Imperia Wishfield Private Limited **DOF:** 29.09.2022 **Reply Status:** 18.07.2023		Tower Evita			AP: Rs. 39,72,547/-	
10	CR/6547/2022 Reema Khana and Pankaj Khana V/s Imperia Wishfield Private Limited **DOF:** 07.10.2022 **Reply Status:** 18.07.2023	06.03.2014	12_A05, 12th Floor, Tower Evita	659 sq. ft.	06.03.2019	TSC: -Rs. 45,29,707/- AP: Rs. 38,11,131/-	Refund
11	CR/6297/2022	04.08.2014	9_A13, 9th Floor, Tower Evita	659 sq. ft.	04.08.2019	TSC: -Rs. 40,01,506/-	Refund

	Rakesh Rani V/s Imperia Wishfield Private Limited **DOF:** 07.10.2022 **Reply Status:** 18.07.2023					AP: Rs. 33,13,572/-	
12	CR/6332/2022 Anuradha Jain V/s Imperia Wishfield Private Limited **DOF:** 07.10.2022 **Reply Status:** 18.07.2023	10.11.2014	3_A11, 3rd Floor, Tower Evita	436 sq. ft.	10.11.2019	TSC: - Rs. 33,77,919/- AP: Rs. 27,94,496/-	Refund
13	CR/6311/2022 Rajdeep Sharma And Tejender Kumar V/s Imperia Wishfield	02.12.2013	6_A06, 6th Floor, Tower Evita	659 sq. ft.	02.12.2018	TSC: -Rs. 44,13,207/- AP: Rs. 36,78,478/-	Refund

	Private Limited **DOF:** 07.10.2022 **Reply Status:** 18.07.2023						
14	CR/6326/2022 Manish Sinha V/s Imperia Wishfield Private Limited **DOF:** 07.10.2022 **Reply Status:** 18.07.2023	21.04.2015	15_A01, 15th Floor, Tower Evita	659 sq. ft.	21.04.2020	TSC: -Rs. 48,38,951/- AP: Rs. 33,63,474/-	Refund

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)

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/6242/2022 Suresh Kumar Chugh 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/6242/2022 Suresh Kumar Chugh 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.0160, Ground Floor, Evita Tower (page no. 47 of complaint)
8.	Unit area admeasuring	315 sq. ft. (page no. 47 of complaint)
9.	Allotment Letter	24.08.2013 (page no. 22 of complaint)
10.	Date of builder buyer agreement	09.02.2015 (page no. 22 of complaint)
11.	Due date of possession	**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*

12.	Possession clause	09.02.2020 (calculated as per possession clause)
13.	Total sale consideration	Rs. 36,93,823/- (as per the statement of account on page no. 17 of reply)
14.	Amount paid by the complainant	Rs. 12,51,000/- [as per the statement of account on page no. 17 of reply]
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 on believing the assurances of the respondent applied for the allotment of a shop/unit bearing no E-0160 having the super area of 315 sq. ft in the project Elvedor situated at sector-37C, Gurugram for total sale consideration of Rs. 32,75,248/- which including of PLC, IFMS, electrical and other charges.

9. That the complainant without making any kind of delay always deposited the amount required as per the payment plan/schedule opted by the complainant immediately on receipt of letters from the respondent company which has also been admitted and acknowledged by the respondent's company officials. The stamp duty, registration charges & administrative charges as mentioned in the payment plan is liable to be payable by the complainant and that too at the time of offer of possession.

10. That apart from issuing a payment receipt on different dates, the respondent also issued an allotment letter dated 24.08.2013 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 the complainant.

11. That after several requests finally the respondent agreed to execute the builder buyer agreement with the complainant and ultimately it was executed on 09.02.2015 showing the total sale consideration of Rs.32,75,248/- 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 09.02.2015, 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 09.02.2015 (commitment period). 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 upto 09.02.2020 and it was told by the authorised 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 thereafter, the complainant tried to approach the respondent and requested them to return their hard-earned money so that he can buy their dream unit/shop in somewhere else. But the respondent/authorized persons never bothered to respond the complainant request.

15. That, till date the complainant is running from pillar to post to get their refund of the amount paid to the respondent till date but futile as the respondent had failed to complete the said project on the assured time, therefore, the complainant requested for the return of amount with interest paid by him. From the abovesaid acts and misdeeds of the respondent, it is crystal clear that despite of request of the complainant to refund the amount deposited by the complainant respondent in a pre-planned hatched conspiracy neither refund the same nor comply with their assurances / promises.

C. Relief sought by the complainant: -

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

I. Direct the respondent to refund the entire paid amount to the complainant along with interest @ 24%.

II. Direct the respondent to pay litigation charges of Rs. 2,00,000/-.

17. 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.

18. 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.0160 in favor of the complainant for a total consideration amount of Rs. 34,81,378/- including applicable tax and additional miscellaneous charges vide booking dated 17.08.2012 and opted the possession-linked payment plan on the terms and conditions mutually agreed by them.

19. 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, (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.

20. That the role of M/s Prime IT Solutions Pvt. Ltd. was indicated to the allottees/complainants vide builder-buyer agreement dated 21.11.2014, and it was conveyed that M/s 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.

21. That 3 out of 5 shareholders of the respondent company, to the tune of 2500 shares each, amounting to Rs. 15,00,000/- (rupees fifteen lacks only) 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/is 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(zk) of the Real Estate (Regulation and Development) Act, 2016, which defines a 'promoter', that the said Project has two promoters, i.e., M/s 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 M/s 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 M/s Prime IT Solutions Pvt. Ltd. has not complied with any of the abovementioned promises & covenants.

24. That on the date of Booking, i.e., on 24.07.2012, Mr. Pradeep Sharma and Mr. Avinash Kumar Setia were also directors as well as shareholders of the respondent company.

25. That in pursuance of a compromise deed dated 12.01.2016, between M/s 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'.

26. 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 M/s 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/complainants was under the access/usage/management/dispense/supervision of M/s 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.

27. That in lieu of the above said, M/s 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 M/s Prime IT Solutions Pvt. Ltd. was/is developer for the said project at the time of booking dated 07.11.2012, 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 M/s Prime IT Solutions Pvt. Ltd. vide Letter dated 13.07.2022.

28. 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.

29. That on account of above-mentioned circumstances, in addition to certain force majeure developments, the respondent company was not able to complete the said project.

30. 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

31. 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

32. 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

33. 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.*

34. 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. Findings on the objection raised by respondent

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

35. 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. 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.

G. Findings on the relief sought by the complainant

I. Direct the respondent to refund the entire paid amount to the complainant along with interest @ 24%.

36. 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)*

37. 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."

38. 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. 36,93,823/- . The buyer's agreement was executed between the parties on 09.02.2015. 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 09.02.2020.

39. 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....."

40. 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."*

41. 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.

42. 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.

43. **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."*

44. 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.

45. 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., 21.07.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

46. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 12,51,000/- with interest at the rate of 10.75% (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.

II. Direct the respondent to pay litigation charges of Rs. 2,00,000/-.

47. 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.

H. Directions of the authority

48. 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 @ 10.75% 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.

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

50. The complaints stand disposed of.

51. Files be consigned to registry.

(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 21.07.2023