BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of decision: 05.07.2023

NAME OF THE BUILDER		M/S IMPERIA WISHFIELD PRIVATE LIMITED	
PROJECT NAME		ELVEDOR	
S. No.	Case No.	Case title	Appearance
1	CR/7710/2022	Rajneesh Mohan V/s Imperia Wishfield Private Limited	Ms. Priyanka Aggarwal Ms. Antara Mishra
2	CR/7711/2022	Ashok Gandhi V/s Imperia Wishfield Private Limited	Ms. Priyanka Aggarwal Ms. Antara Mishra
3	CR/7720/2022	Pramod Kr. Dhawan And Seema Dhawan V/s Imperia Wishfield Private Limited	Ms. Priyanka Aggarwal Ms. Antara Mishra
4	CR/8076/2022	Ashish Mittal and Monika Mittal V/s Imperia Wishfield Private Limited	Ms. Priyanka Aggarwal Ms. Antara Mishra

CORAM:

Shri Ashok Sangwan **Member**

ORDER

1. This order shall dispose of the 4 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: Not mentioned in files as BBA has not been executed in any case.	
Occupation Certificate: Not obtained	

Sr. No	Complaint No., Case Title, and Date of filing of	Date of apartment buyer agreement	Unit No.	Unit admeasuring	Due date of Possession	Total Sale Consideration / Total Amount	Relief Sought

	complaint					paid by the complainant	
1.	CR/7710/2022 Rajneesh Mohan V/s Imperia Wishfield Private Limited **DOF:** 09.01.2023 **Reply Status:** 28.06.2023	Not executed Booking date: 10.09.2012 Allotment Letter: 10.01.2013	F-45	156 sq. ft.		TSC: - Rs. 18,81,516/- AP: - Rs. 4,53,960/-	Refund
2.	CR/7711/2022 Ashok Gandhi V/s Imperia Wishfield Private Limited **DOF:** 09.01.2023 **Reply Status:** 28.06.2023	Not executed Booking date: 19.09.2012 Allotment Letter: 10.01.2013	F-49	156 sq. ft.		TSC: - Rs. 18,81,516/- AP: Rs. 4,53,960/-	Refund

3.	CR/7720/2022 Pramod Kr. Dhawan and Seema Dhawan V/s Imperia Wishfield Private Limited **DOF:** 09.01.2023 **Reply Status:** 28.06.2023	Not executed Booking date: 10.09.2012 Allotment Letter: 07.05.2013	G-08	503 sq. ft.		TSC: - Rs. 57,23,807/- AP: Rs. 4,96,000/-	Refund
4.	CR/8076/2022 Ashish Mittal and Monika Mittal V/s Imperia Wishfield Private Limited **DOF:** 09.01.2023 **Reply Status:** 28.06.2023	Not executed Booking date: 05.09.2012 Allotment Letter: Not provided Welcome Letter: 22.09.2012	F-60	436 sq. ft.	31.03.2019	TSC: - Rs. 34,45,756/- AP: Rs. 29,52,278/-	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/7710/2022 Rajneesh Mohan 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/7710/2022 Rajneesh Mohan 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.	F-45 (as per latest demand letters dated 05.06.2018 and 31.08.2017 on page no. 27-29 of complaint)
8.	Unit area admeasuring	156 sq. ft. (as per latest demand letters dated 05.06.2018 and 31.08.2017 on page no. 27-29 of complaint)
9.	Date of booking	10.09.2012 (as per statement of account on page no. 13 of reply)
10.	Welcome Letter	22.09.2012 (page no. 26 of complaint)
11.	Allotment Letter	10.01.2013 (as per statement of account on page no. 13 of reply)
12.	Date of builder buyer agreement	Not executed
13.	Due date of possession	Cannot be ascertained

14.	Possession clause	Not provided
15.	Total sale consideration	Rs. 18,81,516/- (as per the statement of account on page no. 13 of reply)
16.	Amount paid by the complainant	Rs. 4,53,960/- [as per the statement of account on page no. 13 of complaint]
17.	Occupation certificate	Not obtained
18.	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 booked a unit on 10.09.2012 and paid a booking amount of Rs. 1,50,000/-.
9. That the complainant as per the latest demand letters dated 05.06.2018 and 31.08.2017 the complainant was allotted a commercial unit no. F45 admeasuring 156 sq. ft. in tower 37th avenue in project "37th avenue" located in sector 37C, Gurugram, but prior to that as per the demand letter dated 05.01.2016, the complainant was allotted with a commercial unit no. R-1052 at tower rubix in the same project admeasuring 157 sq. ft. in sector 37C, Gurugram, surprisingly prior to that as per the welcome letter dated 22.09.2012 and the payment receipts by Elvedor, the complainant was also allotted with a unit in the project "Elvedor Retail" in sector 37C, Gurugram. Therefore, the builder in order to acquire money from the complainant, kept on deceiving the complainant.

10. That the respondent to dupe the complainant in their nefarious net did not even offer a buyer's agreement which was supposed to be signed between complainant and M/s Imperia Wishfield Pvt. Ltd., but just to create a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainant, but it is pertinent to mention that, the agreement stands incomplete because, the complainant has neither received the physical copy nor any soft copy of the BBA till now.
11. That the total cost of the said unit is inclusive of BSP, EDC, IDC, PLC, IFMS, Electricity and other charges, out of this, a sum of Rs 4,53,960/- was demanded and paid by the complainant, and this whole amount was paid even before signing of BBA.
12. That the complainant had paid all the demanded installments by respondent on time and deposited Rs 4,53,960/- before execution of BBA, builder extracted more than 30% amount which is unilateral, arbitrary and illegal. After payin more than 30% amount till 2015, the complainant stopped releasing any amount as the project is abandoned from last 6 years.
13. That respondent prima facie was presumed to have handed over the possession of a developed commercial unit within 3 years from the date of booking of the unit, but the builder failed to deliver the possession within that span. In such matter SC has also taken view in civil appeal no(s). 3533-3534 of 2017 m/s. Fortune Infrastructure appellant(s) (now known as m/s. Hicon Infrastructure) & anr. Versus Trevor Dlima & Ors and has taken a

view that "A time period of 3 years would have been reasonable for completion of the contract".

14. That complainant visited project site many time and found that builder had not carried out development work, most importantly the super structure was also incomplete, even during the year 2014 to 2020 (6 year). Project was abandoned and development work was not carried out by the builder. The complainant tried to approach the builder for knowing the reason for inordinate delay, but builder didn't reply. Moreover, the builder never proposed any tentative date of completion of the project nor could assure the same to the complainant so far.
15. That in view of the above said facts and circumstances of the case the complainant is seeking refund of his paid amount with interest till the actual payment from the respondent.

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 with interest @ 21% p.a. calculated from the date of respective deposit till the date of actual realization.

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 Retail' located in sector-37-C, Gurugram, Haryana. The respondent company provisionally allotted the unit bearing no. Shop F-45 in favor of the complainant for a total consideration amount of Rs. 18,81,516/- including applicable tax and additional miscellaneous charges vide booking dated 10.09.2012 and opted the construction-linked payment plan on the terms and conditions mutually agreed by them.

19. That 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.
20. That in lieu of above said understanding & promises, M/s 'Imperia Wishfield Pvt. Ltd.' was incorporated & formed with 4 Directors & 5 shareholders. It is pertinent to mention herein that Mr. Pradeep Sharma and Mr. Avinash Kumar Setia were from M/s 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/- (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 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. Further, a case was filed with the title 'M/s Prime IT Solutions Pvt. Ltd. v. Devi Ram and Imperia Wishfield Pvt. Ltd.', pursuant to which a compromise deed dated 12.01.2016 was signed between the respondent company and M/s Prime IT Solutions Pvt. Ltd. whereby the respondent company was left with the sole responsibility to implement the said project.
23. That these circumstances caused monetary crunch and other predicaments, leading to delay in implementation of the said project. Due to these complications, there was a delay in procurement of the land license and ownership by the respondent company. However, the same has been acquired by the respondent company and the project is near to completion.
24. 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. Both the parties i.e., the complainant as well as the respondent company had contemplated at the very initial stage while signing the MoU that some delay might occur in future and that is why under the force majeure clause, 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.

25. 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.

26. 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 to17.03.2020, 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. Aftermath of lockdown left a great impact on the sector for resuming the fast-paced construction for achieving the timely delivery as agreed under the allotment letter.

27. 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 in huge losses to the respondent company.
28. 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.
29. That despite all the impediments faced, the respondent company was still trying to finish the construction of the said Project and managed to complete the civil work of the said tower/project, and the finishing work, leaving only the MEP work of the towers under progress, which is estimated to be completed by the year 2025 and the respondent company shall be handing out physical possession of the said unit to the complainant.
30. That the complainant is not entitled to the relief prayed for because the complainant has miserably failed to bring to the notice of this hon'ble authority any averment or document worth its salt which could form a basis for this hon'ble authority to consider the complaint under reply which is totally devoid of any merit in law. The complainant himself has violated the

agreed terms by not making timely payment and not making payment for full consideration of the said unit and hence are not entitled to get any relief. The instant complaint is an abuse of process of law.

31. 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

32. 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

33. 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

34. 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.

35. 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.

36. 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.

F.II Objection regarding force majeure conditions:

37. 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, 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 within 3 years from the date of booking as it a reasonable time period. 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

I. Direct the respondent to refund the entire paid amount to the complainant with interest @ 21% p.a. calculated from the date of respective deposit till the date of actual realization.

38. 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)*

39. However, in the present matter no BBA has been executed between the parties therefore the due date of possession cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter ***Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442 : (2018) 3 SCC (civ) 1*** and then was reiterated in ***Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725*** -:

"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered."

40. Accordingly, the due date of possession is calculated as 3 years from the date of booking i.e., 10.09.2012. Therefore, the due date of possession comes out to be 10.09.2015.

41. 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....."

42. 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."*

43. 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.

44. 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.

45. **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."*

46. 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.

47. 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., 05.07.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.

48. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 4,53,960/- 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

49. 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.

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

51. The complaints stand disposed of.

52. Files be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 05.07.2023