

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

Order Reserved on: 21.09.2023

Order pronounced on: 26.10.2023

NAME OF THE BUILDER		M/S IMPERIA WISHFIELD PRIVATE LIMITED	
PROJECT NAME		ELVEDOR	
S. No.	Case No.	Case title	Appearance
1	CR/7925/2022	Jagdish Singh V/s Imperia Wishfield Private Limited	Shri Pardeep Singh Sherawat Advocate and Shri Rishi Kapoor Advocate
2	CR/7937/2022	Ramesh Kumar V/s Imperia Wishfield Private Limited	Shri Pardeep Singh Sherawat Advocate and Shri Rishi Kapoor Advocate

CORAM:

Shri Vijay Kumar Goyal

Member**ORDER**

1. This order shall dispose of both the 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 booking application form 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 unit along with interest.

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 complaint	Date of apartment buyer agreement	Unit No.	Unit admeasuring	Due date of Possession	Total Sale Consideration / Total Amount paid by the complainant in Rs.
1.	CR/7925/2022 Jagdish Singh V/s Imperia Wishfield Private Limited	BBA Not executed Booking date: 11.09.2012	011, Ground Floor, Tower IRIS	315 sq. ft. (Page no. 21	11.09.2015 (Calculated as per Judgement of Hon'ble Supreme	TSC: - 34,76,922/- AP: - 12,14,077/-

	DOF: 26.12.2022 Reply Status: 19.05.2023	(Page no. 20 of complaint) Allotment Letter: 07.05.2013 (Page no. 21 of complaint)	(Page no. 21 of complaint)	of compla int)	Court Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018)	(As per statement of account on page no. 10 of reply)
2.	CR/7937/2022 Ramesh Kumar V/s Imperia Wishfield Private Limited DOF: 26.12.2022 Reply Status: 19.05.2023	BBA Not executed Booking date: 15.09.2012 (Page no. 20 of complaint) Allotment Letter: 13.09.2016 (Page no. 23 of complaint)	G68, Ground Floor, Tower 37 th Avenue (Page no. 23 of complaint)	315 sq. ft. (Page no. 23 of compla int)	15.09.2015 (Calculated as per Judgement of Hon'ble Supreme Court Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018)	TSC: - 39,10,620/- AP: - 6,69,357/- (As per statement of account on page no. 10 of reply)
Relief Sought by the complainant(s)						
i. Direct the respondent to refund the entire paid up amount along with interest from the date of deposit till the date of actual receipt at the prescribed rates.						
ii. Award a cost of Rs.10,00,00/- towards litigation expenses in favour of the complainant and against the opposite party.						
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)						

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4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the booking application form 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/7925/2022 titled as Jagdish Singh 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/7925/2022 titled as Jagdish Singh V/s Imperia Wishfield Private Limited

S. No.	Heads	Details
1.	Project name and location	"Elvedor" at sector 37C, Gurgaon, Haryana
2.	Project area	2 acres

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3.	Nature of project	Commercial Project
4.	RERA registered/not registered	Not registered
5.	DTPC license no. & validity status	47 of 2012 dated 12.05.2012 Valid/renewed up to- 11.05.2016 Licensee- M/s Prime IT Solutions Pvt. Ltd.
6.	Application form	11.09.2012 (Page no. 20 of complaint)
7.	Allotment letter dated	07.05.2013 (Page no. 21 of complaint)
8.	Date of execution of buyer agreement	Not executed
9.	Unit No.	011, Ground Floor, Tower IRIS (Page no. 21 of complaint)
10.	Unit area admeasuring	315 sq. ft. (Page no. 21 of complaint)
11.	Possession clause	Not on record.
12.	Due date of delivery of possession	11.09.2015 (Calculated as per Judgement of Hon'ble Supreme Court <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>)
13.	Total consideration	Rs.34,76,922/- (As per statement of account on page no. 10 of reply)

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14.	Total amount paid by the complainant	Rs.12,14,077/- (As per statement of account on page no. 10 of reply)
15.	Occupation certificate	Not obtained
16.	Date of offer of possession to the complainant	Not offered
17.	Delay in handing over the possession till date of filing complaint i.e., 26.12.2022	7 years 03 months and 15 days

B. Facts of the complaint

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

- i. That on 11.09.2012 the complainant applied for allotment of one commercial retail in "ESFERA ELVEDOR" unit no B-208, ground floor, B block having a super area of 315 sq. ft. and paid an amount of Rs.2,75,000/- and the complainant's customer ID for this booking was IWF-R-0289.
- ii. That on 07.05.2013 the respondent issued a unit allotment confirmation letter that unit IR-011 on ground floor in tower IRIS has been allotted in the commercial project "Elvedor Retail" at sector 37C Gurugram, Haryana.
- iii. That on 05.01.2016 the respondent company issued an allotment-cum-demand letter at the start of excavation and as per this allotment-cum-demand letter the complainant was allotted commercial unit no. IR-011 (315.00 sq. ft.) on the ground floor in tower IRIS in project "37th Avenue"



- at sector 37C, Gurugram. As per Confirmation of unit allotment letter dated 07.05.2013 the project name was "Elvedor Retail" whereas in demand letter the project name was mentioned as "37th Avenue". The complainant asked the respondent company about this and was told that this mistake will be corrected very soon.
- iv. That thereafter complainant requested the respondent that around 6 years have passed since he has applied for a commercial retail and only a unit allotment letter has been issued but no builder buyer agreement has been signed till date on this the respondent assured that a builder buyer agreement will be signed very soon but still no BBA has been signed between the complainant and the respondent.
- v. That till July 2018 the complainant has paid an amount of Rs.12,14,077/- out of total sale consideration of Rs.36,76,949/-.
- vi. That when no construction activities were undertaken by the respondent for a period of almost 2 years then the complainant started making queries and was shocked to learn that neither did the respondent have any right in and over the land at the time of booking, nor did the respondent have requisite sanctions or approvals from the concerned authorities. A license/letter of intent was issued in favour of M/s Prime IT Solutions Pvt Ltd on 24.05.2011 and not the respondent company and as such all the representations provided by the respondent in terms of the buyer's agreement were found to be deceptive and false.

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- vii. That the project was being constructed on a land admeasuring 16 Kanals (2 acres) situated in the revenue estate of Village Garauli Khurd , tehsil and district Gurgaon in section 37C, Gurgaon. Further in agreement the said land was owned in part by one Mr. Devi Ram and other part by M/s Prime IT solution Pvt. Ltd. M/s Prime IT solutions had entered into a collaboration agreement with Mr. Devi Ram and also executed a GPA in favour of M/s Prime IT Solutions Pvt Ltd. It was further mentioned in this BBA that the said M/s Prime IT Solutions Pvt Ltd subsequently applied for and purportedly obtained licence bearing no. 47 of 2012 dated 12.05.2012 from DTCP, Haryana in respect of the project land. Subsequently, M/s Prime IT solutions entered into collaboration with the respondent company pursuant to which the project was being implemented. It was further represented that development plans had also been approved on 24.05.2011 and based on such approvals, the respondents is competent and entitled to execute the project. That when the complainant make further queries he came to know that even the license no 47 of 2012 issued in Favour of the Prime IT solutions on 12-05-2012 has expired on 11.05.2016.
- viii. That in terms of the applicant file issued by the respondent company to the complainant on 18-11-2017 the total basic sale price was shown as Rs.25,88,625/- (at the rate of Rs.8775/- per sq. ft. for a total super area of 295sq. ft.), PLC were Shown as Rs.1,29,431/-, IFMS of Rs.29,500/- and



- other charges at Rs.4,89,830/-. Thus the total sale price (inclusive of all charges) was reflected as Rs.32,37,386/-.
- ix. That after receiving significant amount of money towards all charges i.e. towards PLC and development charges, the respondent did not undertake any construction on the project. The complainant repeatedly requested the respondent to provide status of construction as well as information on the expected date of delivery of the project. However, no response was forthcoming on the part of the respondent.
- x. That as per clause 25 of terms and conditions of the license/letter of intent which was issued in favour of M/s Prime IT solutions Private Limited (and not the respondent) on 24.05.2011, the colonizer (i.e., M/s Prime IT solutions Private Limited) was required to provide an undertaking to the effect that land is not being sold to anyone after issuance of the letter of intent. As such, it is evident that a pre-condition for issuance of letter of intent/ licence was that there is no collaboration agreement/agreement to sell which is in force on the project land. Therefore, neither did the respondent have any license in its favour nor was it, in any event, without a separate license issued in its favour, entitled to acquire the land or undertake construction on the same.
- xi. That the collaboration agreement dated 06.12.2012 which was the governing document granting the respondent right to undertake construction and development was unregistered. Consequently, at the



time of undertaking booking for the complainant, the respondent had no right in and over the said land.

- xii. That in 2016 in order to enforce its purported rights against M/s Prime IT solutions the respondent company filed a civil suit against M/s Prime IT solutions Pvt Ltd before the Ld. Civil Judge (Jr. Div) Gurugram wherein a compromise was executed between the parties to the suit. Pursuant to such compromise dated 12.01.2016 and a compromise decree dated 21.01.2016, the respondent presumably has acquired rights in respect of the project land. However, the respondent still does not have the requisite sanctions from the concerned authorities to undertake construction over the lands since the approval/license was issued only in the name of M/s Prime IT solutions Pvt. Ltd. and not the respondent. As such the construction is completely not sanctioned and this fact has been actively concealed by the respondent for almost 10 years.
- xiii. That even after 10 years from the date of booking, till date only a rudimentary structure of one out of the several building forming part of the project has been erected on the project land which is incapable of being handed over or being inhabitable possession. Additionally, there is no other development on the project land for last four years and the construction activities have been stopped since 2016.
- xiv. That the respondent has breached the fundamental term of the contract by inordinately delaying delivery of the possession. The respondent has committed various acts of omission and commissions by making incorrect

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and false statements in the advertisement materials as well as by committing other serious acts as mentioned in preceding paragraphs.

- xv. That this authority has the jurisdiction to try the present complaint as it is now settled that under section 31 of the Act of 2016, any aggrieved person may file a complaint pertaining to any housing project, either registered or unregistered.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s):
- I. Direct the respondent to refund the entire paid up amount along with interest from the date of deposit till the date of actual receipt at the prescribed rates.
 - II. Award a cost of **Rs.10,00,00/-** towards litigation expenses in favour of the complainant and against the opposite party.
10. 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

11. The respondent contested the complaint on the following grounds: -
- i. 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 G50 in favor of the complainant for a total consideration amount of Rs.34,76,922/- including applicable tax and additional miscellaneous charges vide

- booking dated 11.09.2012 and opted the construction-linked payment plan on the terms and conditions mutually agreed by them.
- ii. 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.
 - iii. That in lieu of above said understanding & promises, M/s 'Imperia Wishfield Pvt. Ltd.' was incorporated & formed with 4 Directors & 5 shareholders. Mr. Pradeep Sharma and Mr. Avinash Kumar Setia were from Ms Prime IT Solutions Pvt. Ltd. and Mr. Harpreet Singh Batra and Mr. Brajinder Singh Batra were from M/s Imperia Structures Pvt. Ltd.
 - iv. That 3 out of 5 shareholders of the respondent company, to the tune of 2500 shares each, amounting to Rs.15,00,000/- each were from M/s Prime IT Solutions Pvt. Ltd. and remaining 2 Shareholders of the respondent company, to the tune of 3750 shares each were from M/s Imperia Structures Pvt. Ltd.
 - v. 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.

- vi. 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.
- vii. 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.

- viii. 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.
- ix. Secondly, after the complete ban was lifted on 14.02.2020 by the Hon'ble Supreme Court, the Government of India imposed National Lockdown on 24.03.2020 on account of nation-wide pandemic COVID-19, and conditionally unlocked it on 03.05.2020, however, this has left a great impact on the procurement of material and labour. The 40-day lockdown effective since 24.03.2020, extendable up to 03.05.2020 and subsequently to 17.03.2020, led to a reverse migration with workers leaving cities to return back to their villages. It is estimated that around 6 lakh workers walked to their villages, and around 10 lakh workers were stuck in relief camps. 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.
- x. 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.

- xi. 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.
- xii. 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.
- xiii. 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.

12. 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

13. 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

14. 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

15. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

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(4) The promoter shall-

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

Section 34-Functions of the Authority:



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

16. 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.
17. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra) and 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*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

18. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to



entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings of the objection raised by the respondent.

F.1 Objection regarding non joinder of M/s Prime IT Solutions Pvt. Ltd. as a party.

19. While filing written reply, a specific plea was taken by the respondent with regard to non-joining of M/s Prime IT Solutions Pvt. Ltd. as a party in the complaint. It is pleaded by the respondent that there was joint venture agreement executed between it and M/s Prime IT Solutions Pvt. Ltd., leading to collaboration agreement dated 06.12.2012 between them. On the basis of that agreement, the respondent undertook to proceed with the construction and development of the project at its own cost. Moreover, even on the date of collaboration agreement the directors of both the companies were common. So, in view of these facts, the presence of M/s Prime IT Solutions Pvt. Ltd. as a respondent before the authority is must and be added as such. However, the pleas advanced in this regard are devoid of merit. No doubt there is mention to that collaboration agreement in the buyer's agreement but the complainant allottee was not a party to that document executed on 06.12.2012. If the Prime IT Solutions would have been a necessary party, then it would have been a signatory to the buyer's agreement executed between the parties on 12.03.2015 i.e., after signing of collaboration agreement. The factum of merely mentioning with regard to collaboration agreement in the buyer's agreement does not ipso facto shows that M/S Prime IT Solutions Pvt. Ltd. should have been added as a respondent. Moreover, the payments against the allotted units were received by the respondent/builder. So, taking into consideration all these facts it cannot be

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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 provisions of law.

F.II Objection regarding force majeure conditions:

20. 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(s)

G.I Direct the respondent to refund the entire paid up amount along with interest from the date of deposit till the date of actual receipt at the prescribed rates.

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

"Section 18: - Return of amount and compensation

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



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

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

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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

(Emphasis supplied)

22. The respondent fails or surrender his claim w.r.t. the alleged date, the authority in a rightful manner can proceed in the light of judicial precedents established by higher courts. When the terms and conditions exchanging (agreement) between parties omits to specify the due date of possession the reasonable period should be allowed for possession of the unit or completion of the project. The Hon'ble Bombay High Court in ***Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. SCC Online Bom 9302*** has held that "...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."
23. That the authority is of the considered view that the Act, 2016 ensures the allottee's right to information about the project and the unit. That knowledge about the timelines of the delivery of possession forms an inseparable part of the agreement as the respondent is not communicating the same to the

complainant/allottee. Hence, it is violation of the Act, and shows his unlawful conduct.

24. The Hon'ble Supreme Court in the case of ***Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018*** observed that *"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.*
25. In view of the above-mentioned reasoning, the date of signing of booking application form, ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 11.09.2015.
26. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by him along with interest prescribed rate of interest. However, the allottee intend to withdraw from the project and are seeking refund of the amount paid by them 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.

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27. 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.
28. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 26.10.2023 is **8.75%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.
29. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default; the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

30. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The Hon'ble Supreme Court in the case of **Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC)**;

MANU/SC/0253/2018 observed that *"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.*** In view of the above-mentioned reasoning, the date of signing of booking application form, ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 11.09.2015. It is pertinent to mention over here that even after a passage of more than 11.1 years (i.e., from the date of booking application from till date) neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottees by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. It is also to mention that complainant has paid almost 35% of total consideration till July 2018. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

31. Moreover, 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 allottees 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....."

32. Further, the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) 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. 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."

33. 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 allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of booking application form or duly

completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

34. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 10.75% p.a. (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 Haryana Rules 2017 *ibid*.

G.II Award a cost of Rs.10,00,00/- towards litigation expenses in favour of the complainant and against the opposite party.

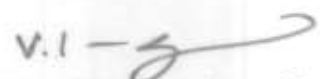
35. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense 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 & legal expenses.

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H. Directions of the authority

36. 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 amount received by it from each of the complainant(s) along with interest at the rate of 10.75% p.a. 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 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.
37. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
38. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
39. Files be consigned to registry.

Dated: 26.10.2023


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram