



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

Complaint no. :	7979 of 2022
Date of filing complaint:	13.01.2023
Date of Decision:	05.07.2023

1. Vijay Pal Saharan 2. Dhiraj Bedi Through SPA Address: D-001, Lagoon Apartment, New Ambience Mall, Gurgaon-122002	Complainants
Versus	
M/s Imperia Wish field Pvt. Ltd. Regd. office: A-25, Mohan Cooperative Industrial Estate, New Delhi-110044	Respondent

CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Sh. Rajiv Kumar Khare (Advocate)	Complainants
Sh. Antra Mishra (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, 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 obligations, responsibilities and functions under the provision of the Act or the rules



and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"Elvedor" at Sector 37 C, Gurugram
2.	Nature of the project	Commercial Project
3.	Project area	2 acres
4.	DTCP license no.	47 of 2012 dated 12.05.2012 valid upto 11.05.2016
5.	Name of licensee	M/s Prime IT Solutions Pvt. Ltd
6.	RERA Registered/ not registered	Not registered
7.	Unit no.	A14, Fifth Floor, Tower Evita (as per BBA on page no. 22 of complaint)
8.	Unit area admeasuring (super area)	900 sq. ft. (as per BBA on page no. 22 of complaint)
9.	Date of allotment	13.03.2013 (page no. 11 of complaint)



10.	Date of builder buyer agreement	12.01.2015 (page no. 12 of complaint)
11.	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.
12.	Due date of possession	12.01.2020 (calculated as per possession clause)
13.	Total sale consideration	Rs. 43,95,843/- (as per the statement of account on page no. 16 of reply)
14.	Amount paid by the complainants	Rs. 6,75,499/- [as per the statement of account on page no. 16 of reply]



15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint:

3. That the complainants on 13.03.2013 was allotted a studio apartment no. 4_S12, admeasuring 900 sq. ft. in tower B, on 4th floor in project Elvedor, sector 37 C, Gurgaon.
4. That the complainants and respondent entered into an apartment buyer agreement on 12.01.2015. As per possession clause the flat was to be delivered on 12.01.2020.
5. That the complainants had paid, against various demands raised by the respondent of Rs. 6,69,690/- by 12.01.2015 i.e., well before the due date of delivery.
6. That the complainants has not been given possession of the booked flat till this day which is a violation of respondent's lawful contractual obligation towards the complainants.
7. That the respondent is liable to pay DPC to the complainants and hand over possession of the booked flat to the complainants as u/s 18(1) of the RERA, 2016.

C. Relief sought by the complainants:

8. The complainants have sought following relief(s):
 - (i) Direct the respondent to pay the delayed possession charges along with prevailing interest as per the provisions of the Act.

D. Reply by respondent:



The respondent by way of written reply made following submissions:

9. That that the complainants were lured in the said agreement, and it is submitted that the complainants, 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 studio' located in sector-37-C, Gurugram, Haryana. The respondent provisionally allotted the unit bearing no. S_A14 in favour of the complainants for a total consideration amount of Rs. 43,95,843/-, including applicable tax and additional miscellaneous charges vide booking dated 24.07.2012 and opted the possession-linked payment plan on the terms and conditions mutually agreed by the complainants and the respondent company.
10. 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.
11. 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.

12. 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.
13. 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.
14. 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.

15. 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.
16. 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'.
17. 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.



18. SThat 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.
19. 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.
20. 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.
21. 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:

22. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

23. 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

24. 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)(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.

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

F. Findings on the objections raised by respondent

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

26. 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 complainants 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. Entitlement of the complainants:

G. I Direct the respondent to pay the delayed possession charges along with prevailing interest as per the provisions of the Act.

27. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"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, —

.....

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."

28. 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..”

29. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges, proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed 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.

30. 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.
31. 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% per annum.



32. 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;*
- (ii) 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;"*

33. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.70% p.a. by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.

34. On consideration of the circumstances, the evidence and other record and submissions made by the parties, 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. It is a matter of fact that buyer's agreement executed between the parties on 12.01.2015, the possession of the booked unit was to be delivered within a period of sixty (60) months from the date of agreement which comes out to be 12.01.2020.

35. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to



delayed possession charges at the prescribed rate of interest i.e., 10.70% p.a. for every month of delay on the amount paid by them to the respondent from the due date of possession i.e., 12.01.2020 till the valid offer of possession of the subject unit after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the Authority:

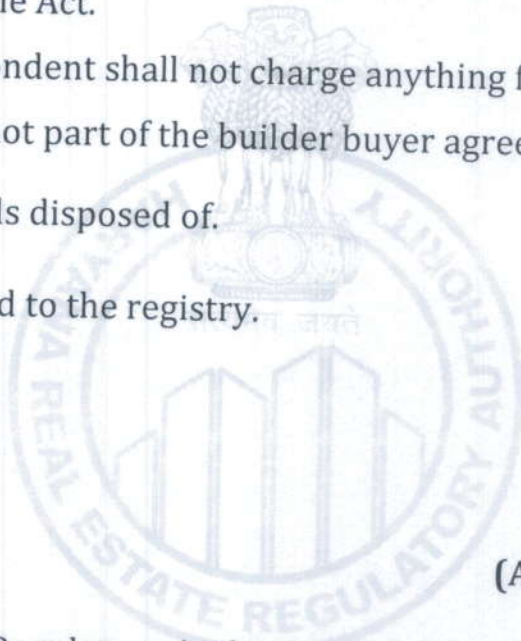
36. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent is directed to handover the valid offer of possession to the complainants within 30 days after obtaining occupation certificate.
- ii) The respondent is directed to pay interest at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 12.01.2020 till the valid offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier.
- iii) The respondent is directed to pay arrears of interest accrued within 90 days from the date of order and thereafter monthly payment of interest to be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.

15



- iv) The complainants are also directed to pay the outstanding dues after adjustment of delay possession charges, if any.
- v) The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- vi) The respondent shall not charge anything from the complainants which is not part of the builder buyer agreement.
37. Complaint stands disposed of.
38. File be consigned to the registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.07.2023

HARERA
GURUGRAM



delayed possession charges at the prescribed rate of interest i.e., 10.70% p.a. for every month of delay on the amount paid by them to the respondent from the due date of possession i.e., 12.01.2020 till the valid offer of possession of the subject unit after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the Authority:

36. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent is directed to handover the valid offer of possession to the complainants *within 30 days* after obtaining occupation certificate.
- ii) The respondent is directed to pay interest at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 12.01.2020 till the valid offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier.
- iii) The respondent is directed to pay arrears of interest accrued within 90 days from the date of order and thereafter monthly payment of interest to be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.