



BEFORE THE HARYANA REAL ESTATE REGULATORY

AUTHORITY, GURUGRAM

Complaint no. : 6707 of 2022
Date of complaint : 14.10.2022
Date of order : 20.09.2023

1. Kusum Mohindra,
2. Abhinav Mohindra,
Both R/o: - Flat no. 1602, Tower F,
Sunshine Helios, Sector-78,
Noida, U.P-201301.

Complainants

Versus

Imperia Wishfield Private Limited.
Through its Authorised Signatory,
Regd. Office at: A-25,
Mohan Co-operative Industrial Estate,
Mathura Road, New Delhi-110044.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Satyawar Kundalwal (Advocate)
Nadeem Arman (Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainant/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 thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Elvedor Studio" at sector 37-C, Gurgaon, Haryana
2.	Nature of the project	Commercial colony
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. and 1 other
6.	RERA Registered/ not registered	Not Registered
7.	Apartment no.	7_A04, 7 th Floor (page no. 31 of complaint)
8.	Unit area admeasuring	659 sq. ft. (page no. 31 of complaint)
9.	Date of builder buyer agreement	13.03.2014 (page no. 29 of complaint)
10.	Possession clause	11.A. SCHEDULE FOR POSSESSION "The company based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said building/said apartment within a period of sixty months from the date of execution of this agreement...." (emphasis supplied)



11.	Due date of possession	13.03.2019 [calculated as per possession clause]
12.	Total sale consideration	Rs.36,51,949/- [page no. 31 of complaint]
13.	Amount paid by the complainants	Rs.31,84,473/- [as alleged by complainants on page 16 of complaint]
14.	Occupation certificate	Not received
15.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. That the complainants were provisionally allotted a unit bearing no. 10_A04, admeasuring 659 sq.ft. on 5th floor in the project of respondent named "Elvedor" at Sector 37-C, Gurugram vide allotment letter dated 30.09.2013. Thereafter, a buyer's agreement dated 13.03.2014 was executed between the parties vide which a unit bearing no. 7_A04 having super area of 659 sq.ft. was allotted in their favour for a total sale consideration of Rs.36,51,949/- and they have paid a total sum of Rs.31,84,473/- against the same.
- II. That in terms of the studio buyer's agreement, the respondent represented that the project was owned in part by one Mr. Devi Ram and in the other part by M/s Prime IT Solutions Private Limited. M/s Prime IT Solutions had entered into a collaboration agreement and general power of attorneys in favor of M/s Prime IT Solutions Private Limited ("Prime IT Solutions"). The said Prime IT Solutions subsequently applied for and purportedly obtained a license from DTCP, Haryana bearing No. 47 of 2012 dated 12.05.2012 in respect of the project land. Subsequently, Prime IT Solutions entered into



collaboration with the respondent pursuant to which the project was being implemented. It was further represented that development plans had also been approved on 24.05.2011 and based on such approvals, the respondent is competent and entitled to execute the project.

- III. That upon execution of the buyer's agreement, the respondent issued several demand letters purportedly as per the stage of construction and the complainants continued to make payments in respect of the same as evidenced by various receipts issued during the contemporaneous period.
- IV. That however, subsequent to receipt of more than 90% of the total price, the respondent did not undertake any construction on the project. The complainants repeatedly requested it 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.
- V. That subsequently, the complainant become aware of the fact that the collaboration agreement dated 06.12.2012 which was the governing document granting the respondent right to undertake construction and development was in fact unregistered. Consequently, at the time of undertaking booking for the complainant, the respondent had no right in and over the project land. He further learnt that vide a general power of attorney purportedly registered, Prime IT Solutions had agreed to sell, transfer and convey the project land in favour of the respondent. Even as on the date of execution of the buyer's agreement,



- no sale had taken place and neither was any registered development agreement executed.
- VI. That the respondent, in order to enforce its purported rights against Prime IT Solutions, filed a civil suit before the Ld. Civil Judge (Jr. Division) 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 sanction from the concerned authorities to undertake construction over the lands since the approval/license was issued only in the name of Prime IT Solutions and not the respondent. As such the construction is completely not sanctioned and this fact has been actively concealed by the respondent for almost 6 years.
- VII. That it is further pertinent to note that even after expiry of 6 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 possession. Additionally, there has been no other development on the project land for last two years and the construction activities have been stopped since 2016.
- VIII. That earlier the complainants have filed a complaint bearing no. 1229/2018 before this Authority wherein the delayed possession charges @10.75% per annum on the paid-up amount was allowed in their favour from the due date of possession till offer of possession vide order dated 28.03.2019 with a liberty that in case the respondent fails to deliver the possession of the unit by March 2020, in that case



the complainants are at liberty to approach for refund. However, the respondent has neither paid any delayed possession charges nor has it handed over the possession of the allotted unit till date.

- IX. That the factum of abandonment of the project is further evident from the report of the local commissioner called by this Authority in various other complaints filed against the respondent by some buyers and as per this local commission report, the respondent had only undertaken 5% of the construction in the area 37th Avenue. The complainant's unit was proposed to be situated in the adjoining land where one Tower Evitais is partially constructed and only 30% of the project has been constructed which has been recorded in the LC report dated 30.01.2019 appointed by the Authority. Hence, this complaint.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- I. To refund the entire paid-up amount along with prescribed rate of interest.
5. 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.

6. The respondent vide reply dated 09.08.2023 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' located in sector-37-C, Gurugram, Haryana. The respondent company provisionally allotted the unit bearing no. 7_A04 in favour of the complainant for a total consideration amount of Rs.38,13,159/- including applicable tax and additional miscellaneous charges vide booking dated 29.03.2012 and opted the construction-linked payment plan on the terms and conditions mutually agreed by them.

- ii. 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 and M/s Imperia Structures Pvt. Ltd., 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 the role of M/s Prime IT Solutions Pvt. Ltd. was indicated to the allottees at the time of booking the said unit, 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. The involvement of M/s Prime IT Solutions Pvt Ltd has been duly acknowledged by the complainant herein and the same is an undisputed fact.
- iv. That in lieu of above said understanding & promises, M/s 'Imperia Wishfield Pvt. Ltd.' was incorporated and 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.
- v. 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.
- vi. 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 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., Ms Prime IT Solutions Pvt. Ltd. and M/s Imperia Wishfield Pvt. Ltd., i.e., respondent company.
- vii. That in pursuance to the above-mentioned venture, M/s Prime IT Solutions Pvt. Ltd., represented and confirmed to the respondent company that Ms 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 and covenants.

- viii. That the annual return of 2013-2014 shows the list of directors at the time when the allotment letter was issued (mentioning that Avinash Setia and Pradeep Sharma were also directors at that time).
- ix. That on the date of allotment, Mr. Pradeep Sharma and Mr. Avinash Kumar Setia were also directors as well as shareholders of the respondent company.
- x. 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'.
- xi. 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



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.

- xii. That in lieu of the above said, M/s Prime IT Solutions Pvt. Ltd. issued a letter dated 23.12.2021 to the Directorate of Town Country Planning, Haryana (hereinafter referred to as 'DTCP'), requesting for grant of permission to change of developer from M/s Prime IT Solutions Pvt. Ltd. to the respondent company, for setting up the said project, in response to which DTCP issued a letter bearing Memo No. LC-2571/JE(S)/2022/16293 dated 09.06.2022, acknowledging the request of M/s Prime IT Solutions Pvt. Ltd. and directing terms and conditions for the same. This also clearly depicts that M/s Prime IT Solutions Pvt. Ltd. was/is developer for the said project at the time of allotment, 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 Ms Prime IT Solutions Pvt. Ltd. vide Letter dated 13.07.2022.
- xiii. 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.

- xiv. That on perusal of all the records submitted herein and after referring to the endless precedents, it is evident that the M/s Prime IT Solutions Pvt. Ltd., Mr. Avinash Kumar Setia and Mr. Pradeep Sharma are equally responsible towards the complainant as the respondent company.
- xv. 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.
- xvi. That both the parties i.e., the complainant as well as the respondent company had contemplated at the very initial stage while signing the allotment letter that some delay might occur in future and that is why under the force majeure clause as mentioned in the allotment letter, it is duly agreed by the complainant that the respondent company shall not be liable to perform any or all of its obligations during the subsistence of any force majeure circumstances and the time period required for performance of its obligations shall inevitably stand extended. It 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. 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. 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. The aftermath of lockdown left a great impact on the sector for resuming the fast pace construction for achieving the timely delivery as agreed under the allotment letter.

- xvii. 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

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the respondent company with nearly no funds to proceed along with the said project.

7. 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

8. The respondent has raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

9. 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

10. 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-

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(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.

11. 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.
12. 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. 2021-2022(1) RCR(C), 357*** 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*** and 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

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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."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent.

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

14. While filing a 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 a 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/allottees were not a party to that document executed on 06.12.2012. If M/s Prime IT Solutions Pvt. Ltd. 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 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:

15. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as orders of the NGT, High Court and Supreme Court, demonetisation, govt. schemes and non-payment of instalment by different allottee of the project but all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 13.03.2019. 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 complainants.

G.I To refund the entire paid-up amount alongwith prescribed rate of interest.

16. The complainants earlier have filed a complaint bearing CR.No. 1229/2018 before this Authority wherein the delayed possession charges @10.75% per annum on the paid-up amount was allowed in their favour from the due date of possession till offer of possession vide order dated 28.03.2019 with a liberty that in case the respondent fails to deliver the possession of the unit by March 2020, in that case the complainants are at liberty to approach for refund. However, the respondent has neither paid any delayed possession charges nor has it handed over the possession of the allotted unit till date. Therefore, the complainants are well within their right to approach this Authority seeking a refund of the paid-up amount along with interest on failure of the respondent to handover the possession of the unit 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)

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17. 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."

18. The complainants had booked the unit in the project of the respondent company situated at sector 37-C for a total sale consideration of Rs. 36,51,949/-. The buyer's agreement was executed between the parties on 13.03.2014. As per possession clause 11(a) of the buyer's agreement, the possession of the unit was to be handed over within 60 months from the date of agreement. The due date for handing over of possession comes out to be 13.03.2019.
19. 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 they have 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....."

20. 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."

21. 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 is 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 allottees, as the allottees wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.

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22. This is without prejudice to any other remedy available to the allottees including compensation for which they may file an application for adjudging compensation with the adjudicating officer under sections 71 and 72 read with section 31(1) of the Act of 2016.
23. **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 allottees intend to withdraw from the project, the respondent shall 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.”*
24. 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.
25. 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., 20.09.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
26. The authority hereby directs the promoter to return the entire amount received by it from the complainants i.e., Rs.31,84,473/- with interest



at the rate of 10.75% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules ibid.

H. Directions of the authority

27. 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 received by it from the complainants i.e., Rs.31,84,473/- alongwith 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.
28. Complaint stands disposed of.
29. File be consigned to the registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.09.2023