

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

Complaint no. : 5508 of 2023
Date of filing complaint: 05.12.2023
First date of hearing: 14.03.2024
Date of decision : 30.05.2024

1. Surender Kumar

R/o: H. No.-1535, Maruti Vihar, Sector-37C,
Gurugram-122001.

2. Narender Kumar through LR Naresh

R/o: H. No.-119, Mandi Piranu, Tehsil-Charkhi
Dadri, Districr-Bhiwani-127308.

Complainants

Versus

M/s Imperia Wishfield Private Limited

Regd. Office at: A-25, Mohan Co-operative
Industrial Estate, Mathura Road, New Delhi -
110044

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Mohit Dua (Advocate)

Complainants

Sh. Sourav (Advocate)

Respondent

ORDER

1. The present complaint has been filed on 05.12.2023 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

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

A. Project and unit related details

2. 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:

S. No.	Particulars	Details
1.	Project name and location	"Elvedor" at sector 37C, Gurgaon, Haryana
2.	Project area	1.175 acres
3.	Nature of project	Commercial
4.	RERA registered/not registered	Not registered
5.	DTCP license no.	51 of 2012 dated 17.05.2012
	Valid up to	16.05.2024
	Name of Licensee	M/s Prime IT Solutions Pvt. Ltd. and others
6.	Application for allotment	13.09.2012 (As per page no. 23 of the complaint)
7.	Date of execution of builder buyer's agreement	10.10.2016 (As per page no. 21 of the complaint)
8.	Unit No.	G60, Ground Floor, Block-B (As per page no. 26 of the complaint)
9.	Unit area admeasuring	315 sq. ft. (As per page no. 26 of the complaint)
10.	Possession clause	11(a) Schedule for possession of the said unit The company based on its present plans and estimates and subject to all just exceptions endeavors to

		<p><i>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 the 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 to abide by all or any of the terms and conditions of this agreement.</i></p> <p>(As per page no. 30 of the complaint)</p>
11.	Due date of delivery of possession	<p>10.04.2022</p> <p>(Note: Due date to be calculated 60 months from the date of execution of agreement i.e., 10.10.2016 plus 6 months grace period in lieu of covid-19)</p>
12.	Total consideration	<p>Rs.36,73,653/-</p> <p>(As per statement of account on page no. 54 of the complaint)</p>
13.	Total amount paid by the complainants	<p>Rs.16,09,940/-</p> <p>(As per statement of account on page no. 54 of the complaint)</p>
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered
16.	Delay in handing over the possession till date of filing complaint i.e., 05.12.2023	2 years 1 month and 25 days

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
- I. That the complainants vide application dated 13.09.2012 booked a unit bearing no. G. 60, ground floor, block-B, Tower-37th Avenue admeasuring 315 sq. ft. in the project of the respondent situated at sector 37 C, Gurugram.
 - II. That the complainant no. 2 is wife/ successor surviving member of co-allottee namely Sh. Narender Singh as he has passed away on 31.06.2019.
 - III. That a buyer's agreement signed between complainants and co-allottee and respondent on 10.10.2016 showing the total sale consideration of Rs.34,18,258/- including of fixtures & fittings, EDC & IDC, IFMS, electricity connection charges and other charges and again the respondent assured the complainants that they have taken all necessary sanctions for the completion of aforesaid project. Out of this, a sum of Rs.16,09,940/- was demanded and paid by the complainants.
 - IV. That on account of not constructing the above said unit within the stipulated period of 60 months, the complainants kept on requesting the respondent company's officials to complete the construction of the said unit/shop as early as possible and handover the peaceful possession of the above said unit/shop. All the time the respondent kept on misguiding and putting forth the complainants on one reason or the others and could not adhere to the terms and conditions as settled and agreed upon between the respondent and the complainant no. 1 and co-allottee.
 - V. That thereafter, the complainants tried to approach the respondent and requested them to return their hard-earned money so that they

can buy their dream unit/shop in somewhere else. But the respondent/authorized persons never bothered to respond the complainant's request.

- VI. That from the above said acts and misdeeds of the respondent, it is crystal clear that despite the request of the complainants to refund the amount deposited by the complainants with the respondent of Rs.16,09,940/-, in respect of the above said allotted unit/shop, the respondent neither to refund the same nor to comply with their assurances / promises, thereby misappropriating the huge hard earned money of the complainants.
- VII. That in view of the above said facts and circumstances of the case the complainants are seeking refund of their paid-up amount with interest till the actual payment from the respondent.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- Direct the respondent to refund the entire amount paid by the complainants along with prescribed rate of interest.
 - Direct the respondent to pay the litigation cost of Rs.55,000/-.

D. Reply by the respondent:

5. The respondent contested the complaint on the following grounds:
- 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 unit in respondent's project 'Elvedor Retail' located in Sector-37 C, Gurugram. The respondent company provisionally allotted the unit bearing no. G60 in favor of the complainants for a total consideration amount of Rs.36,73,653/- including applicable tax and additional miscellaneous charges vide

- booking dated 13.09.2012 and opted the construction-linked plan on the terms and conditions mutually agreed by the complainants and the respondent company.
- ii. That the complainants have not approached the Hon'ble Authority with clean hands or with *bona fide* intentions and that depicts in their actions as they haven't paid the instalments on time and still a large portion of amount is still outstanding, despite the fact numerous reminders sent by the respondent company. It is stated that the complainants have breached the obligations laid upon their booking dated 13.09.2012.
 - iii. That the terms under booking delineates the respective obligations of the complainants as well as those of the respondent, in case of breach of any of the conditions specified therein, the consequences thereof. The complaint has been made to injure and damage the interest and reputation of the respondent and that of the project. Therefore, the instant complaint is liable to be dismissed *in limine*.
 - iv. 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.
 - v. 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.
- vi. 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.
- vii. 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. vs. 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.
- viii. That these circumstances caused monetary crunch and other predicaments, leading to delay in implementation of the said project.
- ix. That 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 and the project is near to completion.

- x. 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.
- xi. That both the parties i.e., the complainants 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 complainants 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 complainants 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 agreement.

- xii. That initially, after obtaining the requisite sanctions and approvals from the concerned Authorities, the respondent 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.
- xiii. That the delay is caused due to lack of funds, as the allottees have grossly underpaid and failed to make timely payments to the

respondent. The complainants have paid only Rs.16,09,940/- to the respondent and a huge sum is still pending to be paid by the complainants. The complainants have caused loss to the respondent and the project could not be completed without the sum required by the respondent.

xiv. That despite all the impediments faced, the respondent 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 shall be handing over physical possession of the said unit to the complainants.

xv. That the complainants are not entitled to the relief prayed for because the complainants have miserably failed to bring to the notice of the Hon'ble Authority any averment or document 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 complainants themselves have 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.

6. The counsel for the complainants vide proceedings of the day dated 30.05.2024 has stated that the co-allottee of the complainant no. 1 has expired and a certificate of the same has been placed on record with complaint. The complainant no. 2 is wife of the co-allottee and the application form for surviving member certificate has been duly placed on record along with the complaint and the same is not objected by the respondent.

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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 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-

(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:

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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. (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."

13. 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 on the objection raised by the respondent:

F.I Objection regarding force majeure conditions:

14. 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 banning the construction for a shorter period of time on account of weather conditions in NCR region. The respondent further raised the contention that other factors like demonetisation, govt. schemes and non-payment of instalment by different allottee of the project also contributed in delay in completion of 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 delivered by 10.04.2022 including the grace period of 6 months on account of covid-19. But the project is still incomplete even if 6 months grace period is allowed on account of covid-19. 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 Direct the respondent to refund the entire amount paid by the complainants along with the prescribed rate of interest.

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

"Section 18: - Return of amount and compensation

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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)

16. 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."

(Emphasis supplied)

17. At the outset, it is relevant to comment on the present possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose

of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

18. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them 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.

19. 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.
20. 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., 30.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.



21. 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;"*
22. The counsel has stated that stated that the buyer's agreement dated 10.10.2016 has been executed with the respondent i.e., M/s Imperia Wishfield Private Limited only and it is evident from the documents placed on record that all the payments were made to said respondent only. So, M/s Prime IT Solutions Pvt. Ltd. has no role to play in it and is neither a party in the aforementioned agreement with the complaint. Further, the counsel for the complainants vide proceedings of the day dated 30.05.2024 has stated that till date no occupation certificate has been obtained by the respondent till date nor any offer of possession has been made. The counsel for the respondent has duly confirmed that the unit is not yet complete and is expected to be completed in the year 2025.
23. 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. By virtue of clause 11(a) of the agreement executed

between the parties on 10.10.2016, the possession of the subject apartment was to be delivered within a period of 60 months from the date of execution of buyer's agreement. Therefore, the due date of handing over possession is 10.10.2021. It is pertinent to mention over here that even after a passage of more than 7.8 years (i.e., from the date of BBA 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 complainants have paid more than 43% of total consideration till October 2023. 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 complainants-allottee intends to withdraw from the project and are well within their right to do the same in view of section 18(1) of the Act, 2016.

24. 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 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.....”

25. 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.”

26. 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 agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by the promoter in respect of the unit with interest at such rate as may be prescribed.
27. 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 complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 10.85% 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 Direct the respondent to pay the litigation cost of Rs.55,000/-.

28. The complainants are 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.

H. Directions of the authority:

29. 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):
- The respondent/promoter is directed to refund the amount i.e., **Rs.16,09,940/-** received from ~~each of~~ the complainants along with interest at the rate of 10.85% 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.

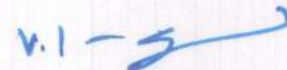
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ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

30. The complaint stand disposed of.

31. File be consigned to registry.

Dated: 30.05.2024


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



HARERA
GURUGRAM