

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

<b>Complaint no.</b>	<b>1172 of 2023</b>
<b>Date of complaint</b>	<b>15.03.2023</b>
<b>Date of decision</b>	<b>30.05.2024</b>

<p>1. Ms. Snigdha Deb Krori Ghosh, 2. Mr. Aurbindo Ghosh, <b>Both R/o:</b> B-33, Technical Paradise, CHGS Limited, Plot no.61, Sector-56, Gurugram (Haryana)-1220011.</p>	<b>Complainants</b>
<b>Versus</b>	
<p>1. <b>M/s Prime Time Infraproject Private Limited,</b> <b>Registered address at:</b> Elements Mall, Near DCM Market, Ajmer Road, Jaipur (Rajasthan)-302021. Also at: Tower no.9B, 10<sup>th</sup> Floor, DLF Cyber City-III, Gurugram-122002.</p> <p>2. <b>M/s Adarsh Buildestate Ltd (also ABL Prime)</b> <b>Registered address at:</b> Elements Mall, Near DCM Market, Ajmer Road, Jaipur (Rajasthan)-302021. Also at: Tower no.9B, 10<sup>th</sup> Floor, DLF Cyber City-III, Gurugram-122002. Also, project at: Pataudi Farrukh Nagar Road, Sector-1, Rampur, Haryana - 122503.</p> <p>3. <b>M/s IRW Builders Private Limited.</b> <b>Registered address at:</b> 10A, Ground Floor, Janakpuri, New Delhi-110052. Also at 10A Ground Floor, BPTP Park Center Building, Sector-38, Gurugram (Haryana) - 122001.</p> <p>4. <b>Winaum Consultancy Services.</b> <b>Registered address at:</b> 478, Sector-22A, Gurugram (Haryana) - 122001.</p>	<b>Respondents</b>

**CORAM:**

Shri Vijay Kumar Goyal

Member

**APPEARANCE:**

Mrs. Snigdha Deb Krori Ghosh

Complainant in person

None

Respondent no. 1 to 3

Shri Gaurav Sehra

Respondent no.4





**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 allottees 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, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name and location of the project	<b>"Maruti Kunj"</b> "Formerly known as ABL Prime", Sector-1, Pataudi, Gurugram
2.	Nature of the project	Residential colony
3.	Project area	24.95 acres
4.	DTCP license no.	84 of 2013 dated 22.10.2013 valid up to 21.10.2017
5.	Name of licensee	M/s Prime Time Infraprojects Pvt. Ltd. and 1 other
6.	RERA Registered/ not registered	<b>Registered</b> (for 14 acres - Plotted township) Vide no. 11 of 2018 dated 21.11.2018. Valid upto 31.03.2019
7.	Unit no.	E-145, Block-E (As per page no. 30 of the complaint)

*Handwritten signature*



8.	Unit area admeasuring	233.404 sq. yds. (As per page no. 30 of the complaint)
9.	Provisional Allotment letter (Issued by respondent no.1)	28.06.2014 (As per page no. 16 of the complaint)
10.	Date of Plot Buyer Agreement	BBA not executed, although a copy of plot buyer's agreement has been placed on record.
11.	Possession clause	<b>11(a) Schedule for Possession</b> <i>"The company shall endeavour of offer possession of the said plot, within twenty-four (24) months from the date of execution of this agreement subject to timely payment by the intending allottee(s) of sale price, stamp duty, govt. charges and any other charges due and payable according to the payment plan and schedule of government charges."</i> <b>(Emphasis supplied)</b> (As per page no. 34 of the complaint)
12.	Due date of possession	<b>28.06.2017</b> <i>"Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018 Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract."</i>  In view of the above-mentioned reasoning, the date of the allotment letter dated 28.06.2014 ought to be

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		taken as the date for calculating the due date of possession. Therefore, the due date for handing over the possession of the unit comes out to be 28.06.2017.
13.	Payment plan	Construction linked payment plan
14.	Total sale consideration	Rs.48,67,640/- (As per page no. 30 of the complaint)
15.	Amount paid by the complainant	Rs.17,50,000/- (As per the details provided by the complaint during proceedings dated 29.02.2024)
16.	Legal Notice (for refund)	12.01.2023 (As per page no. 63 of the complaint)
17.	Occupation certificate/ Completion certificate	Not obtained
18.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. The complainants have made the following submissions: -

- i. That the respondent no.4 who is authorized broker of the respondent no.1&2 approached the complainants for purchasing a plot measuring 233.29 sq. yds. in the above said project at "Maruti Kunj", Sector-1, Pataudi, District Gurugram, and gave some lucrative offers to the complainants.
- ii. That the respondent no.4 further assured the complainants that the possession of the said plot will be delivered well within prescribed time period. upon the assurance of the respondent no.4 being authorized broker of the respondents no.1 & 2, the complainants also met with the officials of the respondents no.1 & 2 who had also given the same assurance to the complainants which were given by the respondent no.4 and assured the above said project is registered with RERA and had obtained all approvals, permissions, licenses from the competent authority or Govt. of Haryana.

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- iii. That relying upon the assurance of the respondents no.1, 2 & 4, the complainants booked a residential plot measuring 233.29 sq. yds. in the above said project developed by the respondents no.1 & 2 and the complainants have made the payments for Rs.19,47,956/-.
- iv. That a draft registration for a plot size 233.39 sq. yds. (plot designated E-145) was made on 15.02.2014 between complainants and respondent no.2, Adarsh Build Estate Limited, Tower-9B, 10<sup>th</sup> Floor, DLF Phase-III, Gurgaon-122002, through Winaum Consultancy Pvt, Ltd., Gurgaon for ABL Prime project, Pataudi, Sector-1, Gurugram.
- v. That at the time of Draft registration, the complainants paid Rs.3,00,000/- to the respondents. the complainants and respondents have agreed for plan-1, time linked installment payment plan (BSP+EDC/IDC+PLC). The complainants kept sending payment notices from time to time. The respondents intentionally and deliberately kept changing their office address just to cause wrongful loss to the complainants.
- vi. That the respondents were not showing enough progress at site and there is no sign of any development on the site. The complainants kept on sending payment invoices saying not making payment would lead to 18% interest as penalty. The complainants made a payment of Rs.19,47,956/- to seller by till 11.06.2016. On enquiring why there is no work at site, they would always say, work would start and project would get completed. Not seeing sufficient progress, a doubt came in mind and buyer stopped paying further. The complainant's office in Gurugram kept shifting several times in Gurugram, from Tower 9B, 10<sup>th</sup> Floor, DLF Phase-III, it was shifted to unit no.502, 5<sup>th</sup> floor, Global Business Square, Building no.32, Sector-44, Gurugram-122002 and then to 404, Dabur Building, Golf Course Rd, Sector-53, Gurugram.

- vii. That the complainants visited office of seller (ABL Pvt. Ltd.) in golf course road, Gurugram office in the year 2019, was told by the respondents that ABL Prime Limited, Pataudi Project was sold and handed over to another company IRW i.e., respondent no.3.
- viii. That the representative of ABL Prime Ltd. advised that they would be eligible to get a plot designated E-30 in lieu of payment of Rs.19,47,956/- made to respondents and in turn ABL Prime Ltd would transfer the amount to builder IRW i.e., respondent no.3. A form was filled out with the understanding that ABL Prime Limited would transfer the amount of Rs.19,47,956/- to builder i.e., respondent no.3. This transfer of money never took place from ABL Prime Ltd. to IRW, hence, no plot is given to the complainants.
- ix. That the respondents in collusion with each other kept assuring the complainants that the development work is going on and possession will be handed over on time. However, to the shock of the complainant, when the complainants visited the site, they found that there was no progress on the spot.
- x. That as the date of promised possession was round the corner, the anxiety of the complainants increased as the project was nowhere nearing completion. Thereafter, the complainants wrote several mails to the respondents, that since they have breached the promised dated of handing over, possession, therefore the respondent no. must refund the entire amount paid by the complainants with interest.

**C. Relief sought by the complainants:**

4. The complainant has sought the following relief(s):
- i. Direct the respondent to refund the entire amount paid along with the prescribed rate of interest.



5. Despite specific direction, the respondent 1, 2 & 3 have failed to comply with the orders of the authority as they neither approached nor put in appearance, even after publication of notice for appearance in two national newspapers i.e., (1) Dainik Jagran (Hindin edition) and (2) The Tribune (English edition) on dated 06.10.2023. It shows that the respondent no. 1, 2 & 3 are intentionally delaying the proceedings of the authority by non-filing of written reply and not put in appearance. Hence, their defence was ordered to be struck off for non-filing of reply vide proceedings dated 23.11.2023 and proceeded ex-parte vide order dated 30.05.2024.

**D. Reply by respondent no.4:**

6. The respondent no.4 has contested the complaint by filing reply on the following grounds: -

- i. That the respondent no.4 has no liability towards the complaint raised by the complainants before Hon'ble HRERA, Gurugram as the respondent no.4 has no privity to the contract with the complainant. The complainant has entered into a direct contract with the respondent no.1 company. whereas respondent no.2 is a parent company of respondent no.1 company and the respondent no.4 has no clue whatsoever about the existence of respondent no.3 company.
- ii. That the respondent no.4 was a freelancer real estate consultant who was approached by the respondent no.1 company through Mr. Hitesh Mattad (sales manager of the respondent no.1 company) sometime in the year 2013, to find buyers for their project Prime Time Infra and the respondent no.4 continued being freelancer real estate consultant till mid-2016.
- iii. That addition of the name of the respondent no.4 is an afterthought of the complainant as the legal notice dated 12.01.2023 of the

complainant at page no.63 of the complaint was only given to respondent no.1, 2 and 3 and the respondent no.4 was never a party to it.

- iv. That as a freelancer real estate consultant, the respondent no.4, got in touch with Mr. Aurobindo Ghosh, who has shown his keen interest to buy plot in the Prime Time Infra Project of the respondent no.1 company.
- v. That the respondent no.4 just acted like a facilitator and introduced Mr. Aurobindo Ghosh with Mr. Hitesh Mattad, the sales manager of respondent no.1 company. The respondent no.4 through Mr. Hitesh Mattad conveyed to Mr. Aurobindo Ghosh about the actual status of the project namely Prime Time Infra Project and categorically told Mr. Ghosh that the respondent no.4 is only acting as a facilitator and it is the responsibility of Mr. Aurobindo Ghosh to perform all the due diligences of the project namely Prime Time Infra Projects and respondent no.1 company to his satisfaction before investing.
- vi. That the complainant after his complete due diligence and satisfaction has entered into a direct contract with the respondent no.1 company.
- vii. That the complainant has falsely stated that some lucrative offer was given by the respondent no.4 while he was looking for the said plot. it will be further respectfully submitted that the complainant has made all the payments from 01.02.2014 to 11.06.2016 directly to the respondent no.1 company on a regular interval after his due diligence and complete satisfaction about the development of the project
- viii. That it will be further pertinent to mention that the respondent no.4 by virtue of being a freelancer real estate consultant has received a consultancy charge of Rs.2,07,110/- on account of the booking made



by the complainant with the respondent no.1 company after deducting of TDS (Tax deducted at source).

- ix. That the respondent no.4 has also deposited the statutory service tax on the payment received from the respondent no.1 company.
  - x. The respondent no.4 has no knowledge of current where about of the respondent no.1 and respondent no.2 company as the respondent no.4 has stopped working as freelancer real estate consultant since mid-2016.
  - xi. That the respondent no.4 company has also changed its business from real estate consultant and has entered into an educational company w.e.f. 17.07.2020 and I had also resigned from the respondent no.4 company on 01.08.2022.
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 based on these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**

8. The plea of the respondents regarding lack of jurisdiction of Authority is 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**

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 the entire Gurugram District for all purposes 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**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.*

So, given 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. Finding on the relief sought by the complainants:**

**F.I Direct the respondent to refund the amount deposited by the complainants along with interest at the prescribed rate.**

9. In the present complaint, the complainants intends to withdraw from the project and are seeking refund as provided under the proviso to section 18(1) of the Act. Section 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,*

*(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"*

10. On perusal of the documents available on records, the authority observes that, the complainants were allotted a plot bearing no. E-145, Block-E, admeasuring 233.404 sq. yds. in project "Maruti Kunj" (formerly known as ABL Prime) in Sector-1, Pataudi, Gurugram, vide allotment letter dated 28.06.2014 (allotment letter issued by respondent no.1 i.e., M/s Prime Time Infraprojects Private Limited) for sale consideration of Rs.48,67,640/- out of which complainants have paid a sum of Rs.17,50,000/- to respondent no.1 against all the demands raised by the respondent no.1 as per the agreed payment plan. Thereafter, on 12.01.2023, the complainant sent a legal notice to the respondent no.1, 2 and 3, claiming refund of the paid-up amount along with interest. However, no agreement to sell was executed between the parties, hence no due date of possession could be ascertained. Therefore, in view of the judgement in **Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018**, where the Hon'ble Apex Court observed that "*a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the*

contract. In view of the above-mentioned reasoning, the date of the allotment letter dated 28.06.2014 ought to be taken as the date for calculating the due date of possession. Therefore, the due date for handing over the possession of the unit comes out to be 28.06.2017.

11. It has come on record that against the total sale consideration of Rs. 48,67,640/-, the complainants have paid a sum of Rs. 17,50,000/- to the respondent no.1. However, the complainants contended that due date to offer the possession of the unit has been lapsed and no completion certificate/ part competition certificate has been obtained against the said project, further, the aforesaid project has lapsed. Hence, in case allottees wish to withdraw from the project, the respondent is liable on demand to return the amount received by it with interest at the prescribed rate if it fails to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale. This view was taken by 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 the case of ***M/s Sana Realtors Private Limited & other vs. Union of India & others SLP (Civil) (supra)*** wherein it was observed as under: -

*"The unqualified right of the allottees 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 allottees, 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 allottees/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 allottees 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".*





12. 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 the 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 the agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by respondents/promoter in respect of the unit with interest at such rate as may be prescribed.
13. There has been an inordinate delay in the project which cannot be condoned. Thus, in such a situation, the complainants cannot be compelled to take possession of the unit and he is well within the right to seek a refund of the paid-up amount.
14. Keeping in view the fact that the allottees/complainants wishes to withdraw from the project and is demanding a return of the amount received by the respondent no.1 in respect of the unit with interest on the failure of the promoter to complete or inability to give possession of the unit in accordance with the terms agreed between them. The matter is covered under section 18(1) of the Act of 2016.
15. 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 a refund of the entire amount paid by them at the prescribed rate of interest i.e., @8.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as of 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*.

16. The respondent no.4 in its reply prayed for deletion of the respondent no.4 from the array of the parties. The respondent no.4 has submitted that it was the real estate consultancy service provider company registered with the Companies Act, 2013. Further contended that the business of the respondent no.4 was in the name of M/s Winaum Ventures Private Limited (*formerly known as M/s Winaum Consultancy Services Private Limited*). Neither any promise made by the respondent no.4 to the complainant nor any payment was received from the complainant against the unit in question. Further, the respondent no.4 is not the promoter/developer of the project. Therefore, in view of the above-mentioned facts, respondent no.4 cannot be held liable under section 18 of the Act, 2016 and hence, the respondent no.4 is hereby deleted from the array of necessary party.

**G. Directions of the Authority:**

17. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance with 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 no.1 is directed to refund the amount i.e., **Rs.17,50,000/-** received by it from the complainants/allottees 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 amount.

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

18. Complaint stands disposed of.

19. File be consigned to the registry.

V.1-3  
**Vijay Kumar Goyal**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 30.05.2024**



**HARERA**  
**GURUGRAM**