

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

Complaint no. : 3727 of 2023
Complaint filed on : 28.08.2023
Date of order : 13.12.2024

Mr. Ashok Kumar

Address:- I-57, Sector 27, Noida, 201301

Complainant

Versus

M/s Imperia Wishfield Pvt.Ltd

Address:- A-25, Mohan Cooperative Industrial Estate,
Mathura Road, New Delhi

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Pragaya Patel (Advocates)

Sh. Geetansh Nagpal (Advocate)

Complainant

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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 as provided 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 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 at sector-37 C, Gurgaon, Haryana
2.	Nature of the project	Commercial project
3.	Project area	1.175 acres
4.	DTCP license no.	51 of 2012 dated 17.05.2012 valid upto 16.05.2024
5.	Name of licensee	M/s Prime IT Solutions Pvt. Ltd.
6.	RERA Registered/ not registered	Not Registered
7.	Shop no.	62, Ground Floor, Block-B
8.	Unit area admeasuring	328 sq. ft.
9	Date of builder buyers agreement	29.05.2016
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 endeavours to complete construction of the said building within a period of 60 months from the date of this agreement....
11	Due date of possession	29.05.2021 [As per possession clause]
12	Total sale consideration	Rs. 38,28,768/- [Page no. 31 of the complaint]
13	Amount paid by the complainant	Rs. 13,90,194/-



		[As per receipt information page 12 of reply]
14	Occupation certificate dated	NA
15	Offer of possession for fit outs	NA

B. Facts of the complaint

3. The complainant has pleaded the complaint on the following facts:-

- I. That the Respondent, M/s Imperia Wishfield Pvt. Ltd, is a company registered with the Registrar of companies under the Companies Act, 2013 having its office at A-25, Mohan Cooperative Industrial Estate, and Mathura Road, New Delhi and is involved in the business of construction and development of commercial projects. That the above-mentioned property was booked in the name of Mr. Ashok Kumar on an application for allotment of a unit in project "ELVEDOR RETAIL", located in Sector 37C, Gurgaon, Haryana vide application dated 12.10.2012.
- II. That the complainant paid a total confirmation/ booking amount of Rs. 3,83,952/- in "ELVEDOR RETAIL", Sector 37C, Gurgaon, Haryana by way of cheque bearing no. 082069 in Corporation Bank, New Delhi on 11.10.2012 which was acknowledged by the Respondent.
- III. That the complainant received a letter from the respondent company titled "Welcome Letter" on 19.11.2012, which confirmed the allotment of commercial retail shop admeasuring 421.00 sq. ft in the said commercial property. On 26.11.2012, the complainant made a further payment of Rs.6,05,588/- towards the scheduled payment & Service Tax in the said commercial project wherein Rs.5,75,928/- was to be paid excluding the service tax of Rs.29,660. The payment



- was made by way of cheque bearing No. 678484 in Corporation Bank, New Delhi on 26.11.2012.
- IV. That the complainant vide letter dated 06.05.2013 received the confirmation letter of allotment, wherein unit no. IR-033 on Ground Floor in Tower IRIS admeasuring 421 sq. ft. in the said commercial project from the respondent. That the letter also mentioned other payment particulars to be paid by the complainant. The complainant made further payment of Rs.4,00,654/- as per payment schedule in the said commercial project by way of cheque bearing no. 167630 in Corporation Bank, New Delhi on 21.01.2016. The receipt of the same was sent by the respondent on 30.01.2016 acknowledging the payment by the complainant.
- V. That the complainant, vide letter dated 10.08.2016, wherein the letter mentioned that the unit initially allotted has been shifted and now provisionally another unit Shop No. G62 admeasuring 328 sq. ft. on G.F(Block B) in another tower "37th Avenue " at Sector 37C Gurgaon, Haryana in the said commercial project has been allotted. That after a period of 4 years since the first payment was made, the respondent on 29.09.2016, sent a letter to the complainant requesting the complainant to sign two copies of the memorandum of understanding, stamp papers and annexures and return the same within 30 days for execution of agreement along with the photograph of the complainant-allottee on page 34 of the MOU.
- VI. That the total sale price payable for the said unit was Rs.38,28,768/- . The complainant paid regular instalments from the date of booking till the stage of "casting of basement slab", due date 15.09.2017 as per the payment plan, thereafter noticing no progress in the construction of the said project and more than 5 years being passed, the



complainant stopped making payments acting in his best interest. As neither the project was registered and nor the Respondent was taking any steps to conclude the construction and offer possession to the buyers.

VII. That the respondent instead of completing the project further demanded Rs.4,21,205/- to be paid within 15 days on casting of 1st floor by way of demand letter dated 05.06.2018. However, there was no sign of building or progress since past years. That the MOU was signed by the complainant and the respondent on 29.06.2016. That as per clause 11(a) the respondent had to complete the construction of the said commercial project within a period of 60 months from the date of signing of the agreement. However, till date the project has not been completed, no offer of possession has been offered nor OC has been obtained or received by the respondent. That the below mentioned clause is arbitrary and one sided favouring the respondent in toto and the rights and interest of the complainant is being prejudiced. That accordingly the complainant has paid an amount of Rs.13,90,194/-.

VIII. That as per Section 18 of the Act, 2016, the promoter is liable to return the amount paid by the buyer along with compensation in case the builder fails to deliver the project. Also as per Section 19(4) of the Act, 2016, the allottee is entitled to claim of the refund of amount paid along with interest. That the right under section 19(4) is an additional right, not the only right conferred under the Act of 2016. It is the option of the buyer/ allottee to claim the refund along with interest and compensation which is to be determined under the Act.

C. Relief sought by the complainant:

4. The complainant has sought the following reliefs:

- a. Direct the respondent to refund an amount of Rs.13,90,194/- along with interest @ 18% Per annum with effect from 11.10.2012 to the complainants towards purchase of the commercial unit.

D. Reply by the respondent.

5. The respondent has contested the complaint on the following grounds:

- i. That the respondent company is well-recognized company and has successfully developed various real estate projects around the country. The respondent company has established a respectable reputation and immense goodwill over a long period of time in real estate business circle by delivering desired residential and commercial units to innumerable happy clients.
- ii. 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 Unit in respondent's project 'ELVEDOR RETAIL' located in Sector-37-C, Gurugram, Haryana. The respondent company provisionally allotted the unit bearing no. SHOP G-62 in favor of the complainant for a total consideration amount of Rs.41,05,753/-, including applicable tax and additional miscellaneous charges vide booking dated 12.10.2012 and opted the construction-link plan on the terms and conditions mutually agreed by the complainants and the respondent company.
- iii. That the complainant has not approached the Authority with clean hands or with *bona fide* intentions and that depicts in her action as she hasn'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. That the complainants have breached the obligations laid upon her vide booking dated 12.10.2012. Hence, complainant is not entitled to get any reliefs from the Authority.

- iv. That the terms under booking delineates the respective obligations of the complainant as well as those of the respondent company, in case of breach of any of the conditions specified therein, the consequences thereof. In view of the abovementioned matter, the captioned complaint has been made to injure and damage the interest and reputation of the respondent company and that of the project. Therefore, the instant complaint is liable to be dismissed *in limine*.
- v. That 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.
- vi. That *in lieu* of above said understanding & promises, M/s 'Imperia Wishfield Pvt. Ltd.' was incorporated & formed with 4 Directors & 5 shareholders. It is pertinent to mention herein that Mr.Pradeep Sharma and Mr.Avinash Kumar Setia were from M/s Prime IT Solutions Pvt. Ltd. and Mr.Harpreet Singh Batra and Mr.Brajinder Singh Batra were from M/s Imperia Structures Pvt Ltd.
- vii. 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.



- viii. That the said project suffered a huge setback by the act of non-cooperation of M/s Prime IT Solutions Pvt. Ltd., which proved to be detrimental to the progress of the said project as majority of the fund deposited with the above-mentioned project account by the allottees was under the charge of M/s Prime IT Solutions Pvt. Ltd. and the said fund was later diverted by the M/s Prime IT Solutions Pvt. Ltd, leaving the respondent company with nearly no funds to proceed along with the said project. Further, a case was filed with the title 'M/s Prime IT Solutions Pvt. Ltd. v. Devi Ram and Imperia Wishfield Pvt. Ltd.', pursuant to which a compromise deed dated 12.01.2016 was signed between the respondent company and M/s Prime IT Solutions Pvt. Ltd. whereby the respondent company was left with the sole responsibility to implement the said project.
- ix. That these circumstances caused monetary crunch and other predicaments, leading to delay in implementation of the said project. 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 company and the project is near to completion.
- x. That the several allottees have withheld the remaining payments, which is further severally affecting the financial health of the respondent company and further, due to the *force majeure* conditions and circumstances, which were beyond the control of the respondent company as mentioned herein below, the construction got delayed in the said project. Both the parties i.e., the complainant as well as the respondent company had contemplated at the very initial stage at the time of booking that some delay might occur in future and that is why under the *force majeure*, 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 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.

- xi. 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.
- xii. 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.

- xiii. That initially, after obtaining the requisite sanctions and approvals from the concerned Authorities, the respondent company had commenced construction work and arranged for the necessary infrastructure including labour, plants and machinery, etc. However, since the construction work was halted and could not be carried on in the planned manner due to the force majeure circumstances detailed above, the said infrastructure could not be utilized and the labour was also left to idle resulting in mounting expenses, without there being any progress in the construction work. Further, most of the construction material which was purchased in advance got wasted/deteriorated causing huge monetary losses. Even the plants and machineries, which were arranged for the timely completion of the construction work, got degenerated, resulting in huge losses to the respondent company.
- xiv. That on account of above-mentioned circumstances, in addition to certain force majeure developments, the respondent company was not able to complete the said project.
- xv. That furthermore, the delay is caused due to lack of funds, as the allottees have grossly underpaid and failed to make timely payments to the respondent company. The complainant has paid only Rs.13,90,194/- to the respondent company and a huge sum is still pending to be paid by the complainant to the respondent company. The complainant has caused loss to the respondent company and the project could not be completed without the sum required by the respondent company.
- xvi. Despite all the impediments faced, the respondent company was still trying to finish the construction of the said project and managed to

complete the civil work of the said tower/project, and the finishing work, leaving only the map work of the towers under progress, which is estimated to be completed by the year 2025 and the respondent company shall be handing out physical possession of the said unit to the complainant.

xvii. That the complainant is not entitled to the relief prayed for because the complainant has miserably failed to bring to the notice of this Authority any averment or document worth its salt which could form a basis for this Authority to consider the complaint under reply which is totally devoid of any merit in law. The complainant themselves has violated the agreed terms by not making timely payment and not making payment for full consideration of the said unit and hence are not entitled to get any relief. The instant complaint is an abuse of process of law.

6. Copies of all the documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

E. Jurisdiction of the authority

7. The Authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I. Territorial jurisdiction

8. 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

9. 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;

10. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
11. 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."

12. 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 objections raised by the respondents:

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

13. While filing written reply, a specific plea was taken by the respondent with regard to non-joining of M/s Prime IT Solutions Pvt. Ltd. as a party in the complaint. It is pleaded by the respondent that there was joint venture agreement executed between it and M/s Prime IT Solutions Pvt. Ltd., leading to collaboration agreement dated 06.12.2012 between them. On the basis of that agreement, the respondent undertook to proceed with the construction and development of the project at its own cost. Moreover, even on the date of collaboration agreement the directors of both the companies were common. So, in view of these facts, the presence of M/s Prime IT Solutions Pvt. Ltd. as a respondent before the authority is must and be added as such. However, the pleas advanced in this regard are devoid of merit. No doubt there is mention to that collaboration agreement in the buyer's agreement but the complainant allottee was not a party to that document executed on 06.12.2012. If the Prime IT Solutions would have been a necessary party, then it would have been a signatory to the buyer's agreement executed between the parties on 29.05.2016 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 provisions of law.

G. Findings on the relief sought by the complainant

G.I Direct the respondent to refund an amount of Rs.13,90,194/- along with interest @ 18% Per annum with effect from 11.10.2012 to the complainants towards purchase of the commercial unit.

14. In the present complaint, the complainant intends to withdraw from the project and are seeking refund of the amount paid by them in respect of subject unit along with interest. Sec. 18(1) of the Act 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

15. **Admissibility of refund along with prescribed rate of interest:** The complainant is 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.

16. 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.
17. 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., 13.12.2024 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
18. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

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

19. 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 29.05.2016, 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 29.05.2021. It is pertinent to mention over here that even after a passage of more than 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 complainant has paid approx. 36.3% of total sale consideration. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.
20. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in *Ireo Grace Realtech*

Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021

".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

21. 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."

22. 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 he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount

received by him in respect of the unit with interest at such rate as may be prescribed.

23. 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., @ 11.10% 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

H. Directions of the authority

24. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- i. The respondent is directed to refund the amount of Rs.13,90,194/- paid by the complainant along with prescribed rate of interest @ 11.10% p.a. as prescribed under section 18 (1) of the Act, 2016 read with rule 15 of the rules from the date of each payment till the date of realization.
 - ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
 - iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainant and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of complainant-allottee.

25. Complaint stands disposed of.
26. File be consigned to registry.


Ashok Sangwan
(Member)

Haryana Real Estate Regulatory
Authority, Gurugram
Dated: 13.12.2024



HARERA
GURUGRAM